

ORIGINAL

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

09-71265

In re ANONYMOUS ONLINE SPEAKERS, )

Case No.

Petitioner, )

Petition for Writ of Mandamus to

vs. )

District Court Case No.

3:07-cv-00505-ECR-(RAM)

U.S. DISTRICT COURT, DISTRICT OF  
NEVADA; QUIXTAR, INC.; SIGNATURE  
MANAGEMENT TEAM, LLC, d/b/a TEAM;  
APOLLO WORKS HOLDINGS, INC.;  
GREEN GEMINI ENTERPRISES, INC.;  
NORTH STAR SOLUTIONS, INC.;  
NORTHERN LIGHTS SERVICES, INC.;  
SUNSET RESOURCES, INC.; and SKY  
SCOPE TEAM, INC., )

Respondents. )

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APPENDIX TO

PETITION FOR WRIT OF MANDAMUS

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6 Petitioner, ) Petition for Writ of Mandamus to  
7 vs. ) District Court Case No.  
8 ) 3:07-cv-00505-ECR-(RAM)  
9 U.S. DISTRICT COURT, DISTRICT OF )  
10 NEVADA; QUIXTAR, INC.; SIGNATURE )  
11 MANAGEMENT TEAM, LLC, d/b/a TEAM;) )  
12 APOLLO WORKS HOLDINGS, INC.; )  
13 GREEN GEMINI ENTERPRISES, INC.; )  
14 NORTH STAR SOLUTIONS, INC.; )  
15 NORTHERN LIGHTS SERVICES, INC.; )  
16 SUNSET RESOURCES, INC.; and SKY )  
17 SCOPE TEAM, INC., )  
18 Respondents. )  
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LIST OF EXHIBITS

1		
2		
3	1.	Minutes of the Court dated February 21, 2008 2 pages
4	2	Order dated April 7, 2008 2 pages
5	3.	Order dated July 7, 2008 22 pages
6	4.	Minutes of the court dated November 12, 2008 3 copies
7	5	Order dated April 8, 2009 35 pages
8	6.	Complaint dated October 23, 2007 19 pages
9	7.	Article dated August 10, 2007 1 page
10	8.	Order Denying Plaintiff's Motion for Clarification of Order and Expedited Discovery 2 pages
11	9.	Quixtar's List of Allegedly Tortious Online Statements 4 pages
12	10	Hooded Angry Man Phones Alticor's Mike Mohn Video
13	11.	"Save Us Dick DeVos' blog 3 pages
14	12.	Declaration of Gary D. 7 pages
15	13.	Printout from YouTube 1 page
16	14.	"Q'Reilly - The No Spin Zone" 3 pages
17	15.	Plaintiff Quixtar Inc.'s Motion to Compel Deponent Benjamin Dickie to Testify About Additional Anonymous Online Speakers 24 pages
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**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b) the **APPENDIX TO PETITION FOR WRIT OF MANDAMUS**

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Exhibit I

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA

QUIXTAR, INC.,	)	CASE NO. 3:07-CV-0505-ECR-RAM
	)	
Plaintiff,	)	MINUTES OF THE COURT
	)	
vs.	)	DATED: February 21, 2008
	)	
SIGNATURE MANAGEMENT TEAM,	)	
d/b/a TEAM,	)	
	)	
Defendant(s).	)	

---

PRESENT: HONORABLE ROBERT A. McQUAID, JR., U.S. MAGISTRATE JUDGE

Deputy Clerk: Jennifer S. Cotter Reporter: FTR 10:06:48 a.m. - 12:08:06 p.m.

Counsel for Plaintiff(s): Miranda Du, John Frankovich, Cedric Chao, and James Sobieraj

Counsel for Defendant(s): Charles Bundren, Molly Rezac, Sharon Woods (telephonically), and Erica Fitzgerald (telephonically)

Counsel for Respondent(s): Mike McCormick and Daniel O'Brien

PROCEEDINGS: MOTION HEARING RE: SUBPOENA RESPONDENTS' MOTION FOR PROTECTIVE ORDER (#52), MOTION TO COMPEL RESPONSES FROM DEPONENT BENJAMIN DICKIE (#54), AND DEFENDANT/COUNTER-PLAINTIFF'S MOTION FOR PROTECTIVE ORDER (#56).

10:00 a.m. Court convenes.

The parties present oral argument as to Subpoena Respondents' Motion for Protective Order (Docket #52), Motion to Compel Responses from Deponent Benjamin Dickie (Docket #54), and Defendant/Counter-Plaintiff's Motion for Protective Order (Docket #56).

In reference to Subpoena Respondents' Motion for Protective Order (Docket #52), IT IS ORDERED that the discovery request contained within Category 12 of the subpoenas is overly broad and no response shall be required to said category. IT IS ORDERED that [52] Motion for Protective Order is DENIED. IT IS FURTHER ORDERED that Quixtar shall pay the costs associated with producing responsive documents, including the cost of the computer experts. Mr. McCormick and counsel for Quixtar shall meet and agree as to which expert(s) to use and which search terms will be employed. IT IS FURTHER ORDERED that Quixtar shall pay for Mr. McCormick's time to go through documents to determine privilege issues. Mr. McCormick shall, upon receiving the documents in hard copy form, advise the Court of the estimated time it will take to review said documents.

IT IS ORDERED that the Motion to Compel Responses from Deponent Benjamin Dickie (Docket #54) is GRANTED to the extent that Mr. Dickie shall respond to Quixtar's questions about his knowledge regarding the Internet sites, blogs, and videos that contain statements about Quixtar; both in his individual capacity and as an employee of TEAM.

In reference to the Defendant/Counter-Plaintiff's Motion for Protective Order (#56), the Court notes the motion may be premature. IT IS ORDERED that Mr. Bundren review the responsive documents he has received from Ashton Partners, prepare a privilege log, and meet and confer with Plaintiff's counsel within thirty (30) days. If there are disagreements regarding the privilege log, the matter may be brought back to this Court at that time. Ashton Partners shall not be required to produce documents in response to the subpoena at this point.

12:04 p.m. Court adjourns.

LANCE S. WILSON, CLERK

By: /s/

Deputy Clerk



Exhibit 2

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

QUIXTAR, INC.,	)	3:07-CV-0505-ECR (RAM)
	)	
Plaintiff,	)	
	)	<u>ORDER</u>
vs.	)	
	)	
SIGNATURE MANAGEMENT TEAM,	)	
LLC, dba TEAM,	)	
	)	
Defendant.	)	

Respondent Benjamin Dickie has filed a Motion to Clarify February 21, 2008, Minute Order or, In the Alternative, His Objection to Order (Doc. #84). Team has concurred in Respondent Dickie's Motion (Doc. #85). Plaintiff Quixtar, Inc. has opposed the Motion (Doc. #95) and Respondent Dickie has replied (Doc. #101).

The court having the considered the papers submitted in connection with the Motion, and good cause appearing therefor, Respondent Dickie's Motion to Clarify (Doc. #84) is GRANTED. Mr. Dickie is to answer questions on the following:

1. Websites, blogs and videos which Mr. Dickie created or on which he posted content, as an individual or as a TEAM employee;
2. Websites, blogs and videos which other TEAM employees created or on which they posted content;
3. Websites, blogs and videos which TEAMS management and leaders (founders of TEAM, policy council members and other TEAM-identified "leadership") created or on which they posted content.

///

1 If following entry of this Order Quixtar learns of websites, blogs and videos containing  
2 potentially tortuous content, the parties will submit letter briefs of no more than two (2) pages,  
3 exclusive of the excerpt of the potentially tortuous content, for resolution by the court. If the court  
4 concludes that such additional content is potentially tortuous then Mr. Dickie will be directed to  
5 answer questions regarding such websites, blogs and videos.

6 IT IS SO ORDERED.

7 DATED: April 7, 2008.



UNITED STATES MAGISTRATE JUDGE

Exhibit 3

1  
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6  
7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA  
9 RENO, NEVADA

10 QUIXTAR INC., ) 3:07-CV-505-ECR-RAM  
11 )  
12 Plaintiff, )  
13 )  
14 v. ) ORDER  
15 )  
16 SIGNATURE MANAGEMENT TEAM, )  
17 LLC d/b/a TEAM, )  
18 )  
19 Defendant. )  
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17 Plaintiff Quixtar is a company that was formerly known as  
18 Amway. Defendant Signature Management TEAM ("TEAM") is a company  
19 that was started by former "Independent Business Operators" ("IBOs")  
20 with Quixtar. Plaintiff's Complaint (#1), filed on October 23,  
21 2007, states causes of action against Defendant for (1) violation of  
22 the Lanham Act, (2) trade secret misappropriation, (3) tortious  
23 interference with existing contracts, 4) tortious interference with  
24 advantageous business relations, and (5) a declaratory judgment  
25 regarding the viability of claims brought against Quixtar in Collin  
26 County Texas. Defendant's Counter-Claim (#15), filed on November  
27 14, 2007, states causes of action for (1) tortious interference with  
28 existing and advantageous business relations, (2) defamation, and

1 (3) a declaratory judgment both that TEAM is not in violation of the  
2 Quixtar rules of conduct and that Quixtar's "IBO" contracts are  
3 unenforceable.

4 Currently pending before the Court is Defendant's Motion to  
5 Transfer the Case to the Eastern District of Texas, Sherman  
6 Division, Based on 28 U.S.C. § 1404(a) (#22). Also pending is  
7 Benjamin Dickie's Objection to [the] Magistrate Judge's April 7,  
8 2008 Order (#124). Defendant TEAM has concurred (#125) in that  
9 objection. For the reasons stated below, the motion (#22) to  
10 transfer is **DENIED** and Dickie's objection (#124) is **SUSTAINED** in  
11 part.

12  
13 **I. Defendant TEAM's Motion to Transfer**

14 Defendant TEAM moves the Court to transfer this case to the  
15 Eastern District of Texas. "For the convenience of parties and  
16 witnesses, in the interest of justice, a district court may transfer  
17 any civil action to any other district or division where it might  
18 have been brought." 28 U.S.C. § 1404(a). The burden of  
19 demonstrating that transfer is appropriate under section 1404(a)  
20 falls on the movant. Commodity Futures Trading Comm'n v. Savage, 611  
21 F.2d 270, 279 (9th Cir. 1979).

22 The basic framework for deciding whether to transfer a case  
23 pursuant to section 1404(a) requires weighing (1) the convenience of  
24 the parties, (2) the convenience of the witnesses, and (3) the  
25 interests of justice. Miracle Blade, LLC. v. Ebrands Commerce  
26 Group, LLC, 207 F. Supp. 2d 1136, 1155-56 (D.Nev. 2002). A non-  
27 exclusive list of related considerations includes (1) the  
28

1 plaintiff's choice of forum; (2) the parties' contacts with the  
2 forum, and the extent to which the contacts are related to the  
3 pending action; (3) access to proof; (4) the cost of litigating in  
4 the two forums; (5) the availability of compulsory process, (6)  
5 judicial economy; (7) the court's familiarity with the governing  
6 law; and (8) the public policy of the forum state. See Jones v. GNC  
7 Franchising, Inc., 211 F.3d 495, 498-99 (9th Cir. 2000); Decker Coal  
8 Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986).

9       Transfer under section 1404(a) "should not be freely granted."  
10 In re Nine Mile Ltd., 692 F.2d 56, 61 (8th Cir. 1982), overruled on  
11 other grounds by Mo. Hous. Dev. Comm'n v. Brice, 919 F.2d 1306, 1311  
12 (8th Cir. 1990). "The defendant must make a strong showing of  
13 inconvenience to warrant upsetting the plaintiff's choice of forum."  
14 Decker Coal, 805 F.2d at 843. Indeed, normally the plaintiff's  
15 choice of forum is given paramount consideration. Galli v.  
16 Travelhost, Inc., 603 F. Supp. 1260, 1262 (D.Nev. 1985). Some  
17 courts have afforded less deference to a plaintiff's choice of forum  
18 where the plaintiff has not chosen its home forum. See, e.g.,  
19 Bryant v. ITT Corp., 48 F. Supp. 2d 829, 832 (N.D.Ill. 1999) ("where  
20 the plaintiff's chosen forum is not the plaintiff's home forum or  
21 lacks significant contact with the litigation, the plaintiff's  
22 chosen forum is entitled to less deference"). Cf. Iragorri v.  
23 United Technologies Corp., 274 F.3d 65, 72 (2d Cir. 2001) (adopting  
24 a sliding scale approach towards forum non conveniens).

25       Here, Defendant TEAM is organized under the laws of the State  
26 of Nevada and TEAM is also apparently owned by several Nevada  
27 corporations. TEAM's principal place of business is in Michigan.

1 Plaintiff Quixtar is a Virginia corporation, headquartered in  
2 Michigan. Although Plaintiff has not brought this actions in its  
3 home forum, Plaintiff's decision to litigate this case in Nevada was  
4 not arbitrary. Further, it is readily apparent that this is not a  
5 dispute that is local in scope; no forum will be without its  
6 inconveniences. The Court finds that Plaintiff's choice of forum in  
7 this case is entitled to substantial, but certainly not dispositive  
8 weight.

9 Defendant's principal argument is that this case should be  
10 transferred due to ongoing litigation in state and federal courts in  
11 Texas, either on the grounds of judicial economy or for the  
12 convenience of the witnesses who may be called to testify in those  
13 cases. Defendant, however, has not made a substantial showing that  
14 judicial economy will be facilitated by transferring this action.  
15 With respect to litigation in federal court, one related federal  
16 action in Texas (Simmons v. Quixtar, 4:07-CV-389-MHS-DDB) has been  
17 referred to arbitration and a second (Simmons v. Quixtar, 4:07-CV-  
18 487-MHS-DDB) has been stayed on the basis of the Colorado River  
19 doctrine. Consolidation is thus unavailing. Neither has Defendant  
20 made any substantial showing that the litigation in Texas state  
21 court renders transfer appropriate. Indeed, beyond the obvious fact  
22 that state and federal cases cannot be consolidated, one related  
23 case in Texas state court was dismissed on the basis of forum non  
24 conveniens. The assertion that discovery could be coordinated  
25 between state and federal cases is too speculative to be given  
26 significant weight. Finally, while Defendant contends that some of  
27 its important witnesses reside in Texas, Plaintiff has identified

28



1 other witnesses it intends to call who reside in Nevada.<sup>1</sup> See Graff  
2 v. Qwest Commc'ns Corp., 33 F. Supp. 2d 1117, 1121 (D.Minn. 1999)  
3 ("[T]ransfer should not be granted if the effect is simply to shift  
4 the inconvenience to the party resisting the transfer.") (citing Van  
5 Dusen v. Barrack, 376 U.S. 612, 646 (1964)), Gherebi v. Bush, 352  
6 F.3d 1278, 1303 (9th Cir. 2003) (same), vacated on other grounds,  
7 542 U.S. 952 (2004).

8 The Court gives significant weight to the fact that Plaintiff  
9 seeks a declaratory judgment related to TEAM's dismissed state law  
10 claims in Collin County Texas. Texas courts obviously have more  
11 expertise with issue of Texas law than Nevada courts, and this issue  
12 on its own makes the matter of whether to transfer this case quite  
13 close. By contrast, because no issue of corporate law is pleaded or  
14 otherwise apparent in this case, the Court does not give any weight  
15 at all to Plaintiff's contention that Defendant has abused Nevada  
16 corporate law.

17 All in all, the balance is close to equipoise. Accordingly,  
18 the motion (#22) to transfer this case to the Eastern District of  
19 Texas, Sherman Division, is DENIED.

20

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22

23

24 <sup>1</sup>In general, the convenience that a transfer would have for  
25 counsel is not a relevant consideration under section 1404(a). See  
26 Grubs v. Consol. Freightways, Inc., 189 F. Supp. 404, 410 (D.Mont.  
27 1960). Even if it were relevant, it would not be given significant  
weight here. Defendant has retained competent counsel in Nevada and  
has not demonstrated any significant prejudice in defending this case  
in Nevada on this basis.

28

1       **II. Dickie and TEAM's Objection**

2       Benjamin Dickie and Defendant TEAM object (##124, 125) to the  
3 Magistrate Judge's second Order (#111) granting Plaintiff Quixtar's  
4 motion (#54) to compel. The objection presents novel questions of  
5 law and will be sustained to the extent outlined below.<sup>2</sup>

6  
7       **A. Background**

8       Plaintiff contends that TEAM has waged a wrongful, illegal  
9 internet campaign to induce Quixtar's "IBOs" to defect from Quixtar.  
10 In connection with Plaintiff's causes of action for tortious  
11 interference with business relations and tortious interference with  
12 an existing contract, Plaintiff took Benjamin Dickie's deposition on  
13 January 18, 2008. (Ex. P to P. Quixtar's Opp. (#141).) According  
14 to Dickie, a part of his duties as a TEAM employee has been to work  
15 as a content manager for TEAM's web sites and blogs.<sup>3</sup> Dickie  
16 testified that these sites include "www.the-team.biz,"  
17 "www.chrisbrady.com," "orinwoodward.com," "www.launching-a-  
18 leadership-revolution.com," "orinwoodward.mindsay.com,"  
19 "orinwoodward.tripod.com," and possibly others. When Plaintiff's  
20 counsel inquired whether there were other blogs that Dickie had set  
21

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22       <sup>2</sup>The Magistrate Judge gave quite careful attention to these novel  
23 issues, but did not have the opportunity to address the issue of  
24 standing because it was not raised. The Court is obliged to review  
the parties' legal contentions de novo, and does so in this Order.

25       <sup>3</sup>"Blog" is short for "web log," which may be defined as follows:  
26 "A frequently updated web site consisting of personal observations,  
27 excerpts from other sources, etc., typically run by a single person,  
and usually with hyperlinks to other sites; an online journal or  
diary." Oxford English Dictionary, <http://dictionary.oed.com> (last  
visited June 24, 2008).

1 up, he responded in the affirmative and his counsel objected.  
2 Dickie's counsel then instructed Dickie not to answer questions  
3 regarding a pending lawsuit in Ottawa County (Michigan) on the basis  
4 of First Amendment privilege. The limited record indicates that  
5 this lawsuit was filed by Quixtar against unnamed Doe defendants.  
6 Dickie refused to answer any questions regarding whether he had any  
7 role in establishing or maintaining "freetheibo.com," "drinkxs.biz,"  
8 "theiborebellion," "greilly," "freetheibo blog,"  
9 "quixtarlostmycents," "saveusdickdevos," "teamfoundingfathers,"  
10 "quixtartoday," "integrityisteam," or "quixtatic." He also refused  
11 to answer whether he knew who posted videos on the internet under  
12 the titles "Hooded Angry Man," "Hooded Angry Man 2," "The New Amway  
13 Highlights," "Stevie goes to China," "Shameus McSteeley Quixtar  
14 versus Meijer," "Rich DeVos, Who's Running Your Company?," "Amway  
15 Yesterday," "Quixtar Tell Me Sweet Little Lies," and "Boston  
16 Teaberry Party."<sup>4</sup> Dickie also refused to answer if there were other  
17 sites that he believed were covered by the privilege, and he refused  
18 to answer if he had ever posted under a pseudonym. Dickie's counsel  
19 explained that the privilege extended to his involvement or non-  
20 involvement with all of these web sites. At the time, the Michigan  
21 court had not addressed the issue of the discoverability of the  
22 identities of the Does, and there is no indication in the record

23

24

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25 <sup>4</sup>As is true with any evidence, the Court will not independently  
26 research any of these web sites and will only consider evidence that  
27 is in the custody of the Clerk of the Court. A citation to a web site  
is insufficient to put the contents of that site into the Court's  
record.

28

1 that it has done so since. There is no information in this record  
2 regarding any subsequent rulings of the Michigan court.

3 Plaintiff filed a motion to compel (#54) responses from  
4 Benjamin Dickie. The Magistrate Judge held a hearing on February 2,  
5 2008, to address these and other pending motions. At the hearing,  
6 the Magistrate Judge stated that Plaintiff must be afforded the  
7 ability to ask about whether Dickie established various web sites to  
8 support its cause of action for tortious interference with a  
9 contract. (Hearing Tr., p. 46, Ex. B to P. Quixtar's Opp. (#141).)  
10 Shortly thereafter, however, Quixtar's counsel posed the following  
11 question:

12 Mr. Chao: Let me ask you a question. We've already  
13 established, I think, through the questioning of the Court and  
14 Mr. O'Brien's answer, that if there's tortious conduct there's  
15 no First Amendment protection; so if there's a website out  
there, and let's say it's not affiliated with TEAM but he knows  
who it is, there's no First Amendment protection, and we should  
be allowed, should we not, to inquire into that?

16 The Magistrate Judge responded:

17 The Court: Well, no, not right now, because right now you have  
18 not shown me what's on every one of those websites that you  
believe is tortious. The answer to that is no.

19 (Hearing Tr., p. 46, Ex. B to P. Quixtar's Opp. (#141).) Quixtar's  
20 counsel then distinguished between Dickie's role as a potential  
21 independent author and his role as an employee of TEAM, and further  
22 asserted that under the most demanding precedents, Quixtar had made  
23 the showing necessary to compel Dickie to answer. (Id. at 76.)

24 The Magistrate Judge focused primarily on whether Plaintiff's  
25 questions could be addressed to Dickie as an individual or merely in  
26 his capacity as an employee; the ultimate minute order granted  
27 Quixtar's motion, as follows:

28

1 IT IS ORDERED that the Motion to Compel Responses from Deponent  
2 Benjamin Dickie (Docket #54) is GRANTED to the extent that Mr.  
3 Dickie shall respond to Quixtar's questions about his knowledge  
4 regarding the Internet sites, blogs, and videos that contain  
5 statements about Quixtar; both in his individual capacity and  
6 as an employee of TEAM.

7 (Order of February 21, 2008 (#72).) Dickie then filed a motion for  
8 clarification (#84), in which TEAM joined (#85). The Magistrate  
9 Judge granted the motion for clarification, issuing the following  
10 revised ruling:

11 Mr. Dickie is to answer questions on the following:

12 1. Websites, blogs and videos which Mr. Dickie created or on  
13 which he posted content, as an individual or as a TEAM  
14 employee;

15 2. Websites, blogs and videos which other TEAM employees  
16 created or on which they posted content;

17 3. Websites, blogs and videos which TEAMS management and  
18 leaders (founders of TEAM, policy council members and other  
19 TEAM-identified "leadership") created or on which they posted  
20 content.

21 If following entry of this Order Quixtar learns of websites,  
22 blogs and videos containing potentially [tortious] content, the  
23 parties will submit letter briefs of no more than two (2)  
24 pages, exclusive of the excerpt of the potentially [tortious]  
25 content, for resolution by the court. If the court concludes  
26 that such additional content is potentially [tortious] then Mr.  
27 Dickie will be directed to answer questions regarding such  
28 websites, blogs and videos.

(Order of April 7, 2008 (#111).) Dickie filed his objection (#124)  
on April 24, 2008, which TEAM joined (#125). Quixtar filed its  
opposition (#141) to the objection on May 19, 2008.

#### 23 B. Standard of Review

24 "A district judge may reconsider any pretrial matter referred  
25 to a magistrate judge in a civil or criminal case pursuant to LR IB  
26 1-3 where it has been shown that the magistrate judge's ruling is  
27  
28

1 clearly erroneous or contrary to law." Local Rule IB 3-1; see 28  
2 U.S.C. § 636(b)(1)(A). The "contrary to law" standard only applies  
3 to the Magistrate Judge's legal conclusions, which are reviewed de  
4 novo.

5  
6 **C. Relevant Authority in Analogous Circumstances**

7 Dickie and Defendant TEAM argue that this Court should apply  
8 the standard articulated in Doe v. Cahill, 884 A.2d 451 (Del. 2005)  
9 and Dendrite International, Inc. v. Doe No. 3, 775 A.2d 756 (N.J.  
10 Super. Ct. App. Div. 2001), and vacate the Magistrate Judge's order.  
11 Plaintiff Quixtar, on the other hand, argues that (1) the First  
12 Amendment is not implicated because tortious speech is not protected  
13 by the First Amendment; (2) the First Amendment affords no  
14 protections to anonymity in the context of "commercial speech"; (3)  
15 Quixtar has met any of the standards various courts have announced  
16 for requiring the disclosure of anonymous internet authors,<sup>5</sup> which  
17 Plaintiff also asserts are inapplicable here because this case does  
18 not involve a subpoena to an internet service provider ("ISP"); and  
19 finally, (4) Dickie lacks standing to object to discovery based on  
20 the purported rights of anonymous third parties.

21 Typically, analogous situations to the one presented here arise  
22 when a plaintiff seeks to compel an ISP to disclose the identity of  
23 a "Doe defendant" who wishes to remain anonymous. See generally  
24 Krinsky v. Doe 6, 159 Cal. App. 4th 1154 (6th Dist. 2008)  
25 (collecting and reviewing cases); Michele McCarthy, Right of

26  
27 <sup>5</sup>We consider authors writing under a pseudonym to be anonymous  
28 for the purposes of the issues raised in this Order.

1 Corporation, Absent Specific Statutory Subpoena Power, to Disclosure  
2 of Identity of Anonymous or Pseudonymous Internet User, 120 A.L.R.  
3 5th 195 (2004) (same); Michael Vogel, Unmasking "John Doe"  
4 Defendants: The Case Against Excessive Hand-Wringing Over Legal  
5 Standards, 83 Or. L. Rev. 795 (2004); Lyrissa Barnett Lidsky,  
6 Silencing John Doe: Defamation & Discourse in Cyberspace, 49 Duke L.  
7 J. 855 (2000). This is, apparently, the posture of the related case  
8 in Michigan. Several approaches have arisen in these circumstances.  
9 Despite differences, the weight of authority holds that courts must  
10 adopt procedures that strike a balance between the plaintiff's need  
11 to destroy the Doe's anonymity and the anonymous speaker's First  
12 Amendment rights. Moreover, no decision this Court has encountered  
13 has simply rejected procedural precautions on the basis that the  
14 anonymous speech was commercial in nature.

15 In the approach taken by the court in In re Subpoena Duces  
16 Tecum to America Online, Inc., 52 Va. Cir. 26, 2000 WL 1210372  
17 (2000), rev'd on other grounds by Am. Online v. Anonymous Publically  
18 Traded Co., 542 S.E.2d 377 (Va. 2001), disclosure will only be  
19 compelled if the evidence is required for the case and "the party  
20 requesting the subpoena has a legitimate, good faith basis to  
21 contend that it may be the victim of conduct actionable in the  
22 jurisdiction where suit was filed . . . ." Id. at \*8. This  
23 approach has been faulted for "offer[ing] no practical, reliable way  
24 to determine the plaintiff's good faith and leav[ing] the speaker  
25 with little protection." Krinsky, 159 Cal. App. 4th at 1167  
26 (modification supplied).

1 A second approach requires the court to evaluate the  
2 plaintiff's need to identify the speaker, and requires that the  
3 plaintiff's allegations of illegality be able to withstand a motion  
4 to dismiss. See Columbia Ins. Co. v. Seescandy.com, 185 F.R.D. 573,  
5 578-80 (N.D.Cal. 1999) (requiring plaintiff to (1) "identify the  
6 missing party with sufficient specificity such that the Court can  
7 determine that the defendant is a real person or entity who could be  
8 sued in federal court"; (2) "identify all previous steps taken to  
9 locate the elusive defendant"; (3) "establish to the Court's  
10 satisfaction that the plaintiff's suit against the defendant could  
11 withstand a motion to dismiss"; and (4) "file a request for  
12 discovery with the Court, along with a statement of reasons  
13 justifying the specific discovery requested as well as  
14 identification of a limited number of persons or entities on whom  
15 discovery process might be served and for which there is a  
16 reasonable likelihood that the discovery process will lead to  
17 identifying information about defendant that would make service of  
18 process possible"). The motion to dismiss approach has also been  
19 criticized by some courts for offering insufficient protections to  
20 anonymous speakers. See Highfields Capital Mgmt., L.P., v. Doe, 385  
21 F. Supp. 2d 969, 975 & 975 n.8 (N.D.Cal. 2005) ("It is not enough  
22 for a plaintiff simply to plead and pray. Allegation and  
23 speculation are insufficient. The standards that inform Rule 8 and  
24 Rule 12(b)(6) offer too little protection to the defendant's  
25 competing interests.").

26 A third, more demanding approach requires a plaintiff to submit  
27 evidence sufficient to overcome a limited motion for summary  
28



1 judgment attacking the actionability of the allegedly defamatory  
2 statements. See Cahill, 884 A.2d 451 (embracing and clarifying the  
3 standard applied in Dendrite Int'l, 775 A.2d 756). The "prima  
4 facie" or "summary judgment" procedure is limited to evidence that  
5 is or should be in the possession of the plaintiff. Thus, whether  
6 or not the plaintiff is a public figure, he or she need not present  
7 evidence of "actual malice" as this would require evidence that the  
8 plaintiff does not have.<sup>6</sup> Cahill, 884 A.2d at 464. The Dendrite  
9 standard, as summarized by Cahill, requires a plaintiff:

- 10 1) to undertake efforts to notify the anonymous poster that he  
11 is the subject of a subpoena or application for an order of  
12 disclosure, and to withhold action to afford the anonymous  
13 defendant a reasonable opportunity to file and serve opposition  
14 to the application. In the internet context, the plaintiff's  
15 efforts should include posting a message of notification of the  
16 discovery request to the anonymous defendant on the same  
17 message board as the original allegedly defamatory posting;  
18 (2) to set forth the exact statements purportedly made by the  
19 anonymous poster that the plaintiff alleges constitute  
20 defamatory speech; . . . .  
21 (3) to satisfy the prima facie or "summary judgment standard";  
22 [and]  
23 (4) [to] balance the defendant's First Amendment right of  
24 anonymous free speech against the strength of the prima facie  
25 case presented and the necessity for the disclosure of the  
26 anonymous defendant's identity in determining whether to allow  
27 the plaintiff to properly proceed.

28 Cahill, 884 A.2d at 460 (modifications supplied); see also  
Highfields, 385 F. Supp. 2d at 974 n.6, 975 n.8 (relying on  
Dendrite); Best Western Int'l., Inc. v. Doe, CV-06-1537-PHX-DGC,  
2006 WL 2091695 (D.Ariz. 2006) (unreported) (following Cahill);  
Krinsky, 159 Cal. App. 4th at 1170-72 & 1172 n.14 (reviewing  
authority and adopting a "prima facie" test equivalent to that in

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<sup>6</sup>Dickie and Quixtar ask the Court to adopt Cahill, but ignore  
this component of the Cahill opinion.

1 Cahill). The Cahill court shortened the test, retaining the notice  
2 requirement but opining that the second requirement and the fourth  
3 requirement should both be considered implicit in the third  
4 requirement. 884 A.2d at 461. Thus, Cahill requires that the  
5 plaintiff give notice, or attempt to do so,<sup>7</sup> and that the plaintiff  
6 satisfy a "prima facie or 'summary judgment standard'." 884 A.2d at  
7 460-61.

8 Finally, Matrixx Initiatives, Inc. v. Doe, 138 Cal. App. 4th  
9 872 (6th Dist. 2006), allowed discovery to proceed without inquiring  
10 into the protections required by the First Amendment on the basis  
11 that the party who opposed discovery was not, or at least did not  
12 admit to being, the anonymous author. There, the plaintiff traced  
13 postings made under two pseudonyms on an internet financial bulletin  
14 board to a hedge fund, and the hedge fund's manager refused to  
15 answer any questions regarding the identities of the anonymous  
16 authors at his deposition on the grounds that their anonymity was  
17 protected by the First Amendment. Id. at 876. The California Court  
18 of Appeal held that under these circumstances the non-party lacked  
19 standing to raise the issue of the anonymous speaker's First  
20 Amendment rights. Id. at 879-81. Although the California Court of  
21 Appeal is not an Article III court, the Court relied on Article III  
22 jurisprudence, id. at 878 n.4 , and found that the party seeking to  
23 quash discovery did not have the "close relationship" with the

24

25

26 <sup>7</sup>Cahill appears to insist that the plaintiff post a message on  
27 the web site at issue. This poses numerous problems, including the  
28 fact that the internet site may no longer exist. See Krinsky, 159  
Cal. App. 4th at 1170 & n.11.

1 anonymous author required to raise the third party's rights.<sup>8</sup> Id.  
2 at 880-81 (citing NAACP v. Ala., 357 U.S. 449, 458-460 (1958)).

3  
4 **D. Analysis of Dickie and TEAM's Objection**

5 While a pseudonym can certainly be expressive, more important  
6 than the expression of the pseudonym, at least in general, is the  
7 condition of expression that anonymity affords.<sup>9</sup> Anonymity can  
8 focus the audience on the speech rather than the speaker, and more  
9 pragmatically, it is a useful antidote to reprisal and the other  
10 potential inconveniences and adversities of publicity. "Anonymity,"  
11 the Supreme Court has noted, "is a shield from the tyranny of the  
12 majority," McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 357  
13 (1995), and "[t]he decision in favor of anonymity may be motivated  
14 by fear of economic or official retaliation, by concern about social  
15 ostracism, or merely by a desire to preserve as much of one's  
16 privacy as possible." Id. at 341-42.<sup>10</sup> Where speakers may remain

17  
18 <sup>8</sup>The Matrixx court's factual reasoning is not entirely clear.  
19 The court noted that the postings could be traced to a hedge fund, but  
nevertheless considered the anonymous authors to be "presumably  
unrelated third parties." 138 Cal. App. 4th at 881.

20 <sup>9</sup>The distinction is significant: As a condition of speech,  
21 rather than pure speech, anonymity is unique in that it can be  
22 subsequently destroyed through negligence, or for that matter, an  
intentional act of the speaker.

23 <sup>10</sup>On numerous occasions the Supreme Court has held that anonymity  
24 must be afforded some amount of First Amendment protection, albeit in  
25 cases primarily involving prior restraints. See Buckley v. American  
26 Constitutional Law Found., 525 U.S. 182, 200 (1999) (invalidating a  
27 statute that required circulators of an initiative petition to wear  
identification badges); McIntyre, 514 U.S. at 357 (overturning law  
that prohibited distribution of campaign literature that did not  
contain the name and address of the distributor); Talley v.  
28 California, 362 U.S. 60, 65 (1960) (invalidating law prohibiting the  
distribution of "any handbill in any place under any circumstances"

1 anonymous, ideas are communicated that would not otherwise come  
2 forward. See Doe v. 2TheMart.Com, Inc., 140 F. Supp. 2d 1088, 1092  
3 (W.D.Wash 2001) ("The right to speak anonymously extends to speech  
4 via the Internet. Internet anonymity facilitates the rich, diverse,  
5 and far ranging exchange of ideas."). To fail to protect anonymity  
6 is, therefore, to chill speech. Yet where speakers remain anonymous  
7 there is also a great potential for irresponsible, malicious, and  
8 harmful communication, and the lack of accountability that anonymity  
9 affords is anything but an unqualified good. This is particularly  
10 true where the speed and power of internet technology makes it  
11 difficult for the truth to "catch up" to the lie. See Lidsky,  
12 Silencing John Doe, 49 Duke L. J. at 864. Anonymity thus presents  
13 benefits, risks, and problems. To the extent that Courts take on  
14 the task of protecting it, balancing is inevitable.

15 With this in mind, caution is warranted with respect to  
16 purported per se rules. In particular, a per se assertion that the  
17 First Amendment does not protect tortious speech is not terribly  
18 helpful for the purposes of legal analysis.<sup>11</sup> First, the scope of  
19

20 that did not contain the name and address of the person who prepared  
21 it, on the grounds that the law would chill "perfectly peaceful  
22 discussions of public matters of importance"); NAACP v. Ala., 357 U.S.  
23 449, 462 (1958) (holding that discovery order requiring NAACP to  
24 disclose its membership interfered with freedom of association). But  
cf. Branzburg v. Hayes, 408 U.S. 665, 695-708 (1972) (White, J.,  
writing for a plurality) (concluding that a reporter does not have a  
First Amendment right not to reveal unnamed sources to a grand jury).

25 <sup>11</sup>Compare Beauharnais v. People of State of Ill., 343 U.S. 250,  
26 254-255 (1952) (libelous utterances are unprotected speech);  
27 Chaplinsky v. State of N.H., 315 U.S. 568, 572 (1942) (same), with New  
28 York Times Co. v. Sullivan, 376 U.S. 254, 269 (1964) (holding that  
prohibitions against libel "can claim no talismanic immunity from  
constitutional limitations").

1 First Amendment protections of speech is not, and should not be  
2 defined by state law torts.<sup>12</sup> Second, states, including the State  
3 of Nevada, have long recognized the importance of the First  
4 Amendment in crafting and delimiting the scope of actionable  
5 defamation. Third, the tort of interference with a contract need  
6 not, at least in theory, be founded in speech at all, but this  
7 cannot mean that the First Amendment is not implicated by the cause  
8 of action where speech is alleged to be harmful. See Blatty v. New  
9 York Times Co., 728 P.2d 1177, 1183 (Cal. 1986) ("The fundamental  
10 reason that the various limitations rooted in the First Amendment  
11 are applicable to all injurious falsehood claims and not solely to  
12 those labeled 'defamation' is plain: although such limitations  
13 happen to have arisen in defamation actions, they do not concern  
14 matters peculiar to such actions but broadly protect free-expression  
15 and free-press values."). Fourth, and relatedly, there is every  
16 reason to predict that the Nevada Supreme Court would apply state  
17 law privileges designed to protect speech in the context of tortious  
18 interference with a contract, just as it has with defamation. Cf.  
19 Blatty, 728 P.2d at 1183.<sup>13</sup> Thus, in sum, the Court must look

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22 <sup>12</sup>New York Times Co., 376 U.S. at 269.

23 <sup>13</sup>Notably, there is no First Amendment "opinion privilege,"  
24 Milkovich v. Lorain Journal Co., 497 U.S. 1, 3 (1990), but the Nevada  
25 Supreme Court recognizes such a privilege. See Pegasus v. Reno  
26 Newspapers, Inc., 57 P.3d 82, 87 (Nev. 2002) ("Statements of opinion  
27 cannot be defamatory because 'there is no such thing as a false idea.  
28 However pernicious an opinion may seem, we depend for its correction  
not on the conscience of judges and juries but on the competition of  
other ideas.'" (quoting Gertz v. Robert Welch, Inc., 418 U.S. 323,  
339-40 (1974))).

1 beyond a simple recitation of the elements of the torts at issue in  
2 this case to determine whether the statements are actionable.

3 Of course, the inquiry is also complicated by the fact that it  
4 is impossible on this record to establish whether Dickie or TEAM  
5 have standing to raise their objection. See Matrixx, 138 Cal. App.  
6 4th 872. The well established rule, subject to pragmatic and  
7 important exceptions,<sup>14</sup> is that, "[i]n the ordinary case, a party is  
8 denied standing to assert the rights of third persons." Arlington  
9 Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 263 (1977); see,  
10 e.g., Secretary of State of Md. v. Joseph H. Munson Co., 467 U.S.  
11 947, 955 (1984); Warth, 422 U.S. at 501. "Jus tertii" standing  
12 generally requires (1) that the litigant has suffered an injury in  
13 fact, (2) that the litigant has a "close relationship" to the third  
14 party, and (3) that there is some hindrance to the third party's  
15 ability to protect his or her own interests. Powers, 499 U.S. at  
16 411. It should be noted that the inquiry into whether there is a  
17 "close relationship" is functional in nature, and it is not  
18 necessarily required that the parties know, work, or associate with  
19 one another. See id. at 413 (juror and criminal defendant have  
20 required relationship where "the relationship between [them is] such

21  
22 <sup>14</sup>E.g. Powers v. Ohio, 499 U.S. 400, 415 (1991) (defendant in a  
23 criminal case has standing to raise the third-party equal protection  
24 claims of jurors excluded by the prosecution because of their race);  
25 Craig v. Boren, 429 U.S. 190, 192-94 (1976) (permitting beer vendors  
26 to assert rights of prospective male customers who were barred, unlike  
27 females of the same ages, from purchasing beer). Notably, third party  
28 standing is a jurisprudential, not a constitutional or jurisdictional  
problem. Craig, 429 U.S. at 193-94; see also Warth v. Seldin, 422  
U.S. 490, 500-01 (1975) ("In some circumstances, countervailing  
considerations may outweigh the concerns underlying the usual  
reluctance to exert judicial power when the plaintiff's claim to  
relief rests on the legal rights of third parties.").

1 that the former is fully, or very nearly, as effective a proponent  
2 of the right as the latter") (modification supplied; quoting  
3 Singleton v. Wulff, 428 U.S. 106, 115 (1976)). Even with this  
4 observation, however, it is impossible to determine on this record  
5 if either of the first two requirements for third party standing are  
6 met.

7       Among the many reasons for requiring parties to rely on their  
8 own rights in Article III courts is the need to avoid simple  
9 obstruction based on speculation regarding the positions of persons  
10 not before the court. Dickie has no standing to object to answering  
11 questions about what he does not know with respect to internet sites  
12 with which he has no involvement. Dickie may or may not have  
13 standing to otherwise object, depending upon the facts which he  
14 refuses to divulge. Moreover, to the extent that he does have  
15 standing, he clearly cannot refuse to answer if he had any  
16 involvement with the mere administration of a website without  
17 articulating why this administration implicates his First Amendment  
18 rights.

19       Plaintiff is correct that the authors of the internet postings  
20 at issue could have contested the discovery of their identities  
21 using pseudonyms in this Court. See Doe v. Bolton, 410 U.S. 179,  
22 187 (1973) (use of a pseudonym in litigation is permissible and does  
23 not destroy standing). Again, this is the typical posture of  
24 similar cases. Nevertheless, the fact that the third parties may  
25 not have been put on notice that their identities may be divulged  
26 via discovery is certainly a potential "hindrance to the third  
27  
28



1 party[ies'] ability to protect [their] interests." Powers, 499 U.S.  
2 at 411 (modification supplied).

3 In this Court's view, the fact that there has been an  
4 insufficient showing of standing, third party or otherwise, should  
5 not simply end the inquiry. First, it is possible that such a  
6 showing could be made in this case without creating a situation  
7 where there is "nullification of the right at the very moment of its  
8 assertion." NAACP, 357 U.S. at 459. Second, the fact that  
9 permitting discovery amounts to prospective court action is not  
10 insignificant here, and the Court is not without independent  
11 authority to adopt procedures to protect against potential  
12 violations of third party constitutional rights. To fail to inquire  
13 into the merits of this issue, e.g., Matrixx, 138 Cal. App. 4th 872,  
14 may well be to decide them in practice, and this is problematic  
15 where there is at least good reason to believe that the anonymous  
16 authors of the internet postings would object to their identities  
17 being revealed without notice.

18 The order of the Magistrate Judge will be vacated in order to  
19 allow Dickie and TEAM a reasonable opportunity to notify third party  
20 authors that Dickie may be obliged to reveal their identities. Any  
21 party, including Dickie, who wishes to oppose the divulgence of his  
22 or her identity may do so under a pseudonym,<sup>15</sup> and the Court should

23  
24 <sup>15</sup>The Court notes that this likely would have been the procedure  
25 if the facilitator of the third party internet communication had been  
26 a cable ISP. See 47 U.S.C. § 551(c)(2)(B); Cahill, 884 A.2d at 455  
27 & n.4. E.g. Warner Bros. Record Inc. v. Does 1-14, No. 07-CV-706  
(RJL), \_\_\_ F. Supp. 2d \_\_\_, 2008 WL 60297 (D.D.C. Jan. 4, 2008)  
(allowing subpoena of ISP, but also allowing subscriber time to file  
28 motion to quash). The Court sees no reason why this is not analogous  
and persuasive authority regarding the principles that should apply



1 refrain from acting for a reasonable amount of time to allow for  
2 this possibility. That said, the Court will not consider any  
3 further objections based on anonymity unless there is a factual  
4 basis for finding that the objecting party has standing to raise the  
5 objection.

6 For the guidance of the Magistrate Judge, the Court finds that  
7 so long as an objection is raised by a party with standing to raise  
8 it, Cahill articulates the correct standard. See Highfields, 385 F.  
9 Supp. 2d at 975. Cf. Leatherman v. Tarrant County Narcotics  
10 Intelligence and Coordination Unit, 507 U.S. 163, 168-69 (1993)  
11 ("federal courts and litigants must rely on summary judgment and  
12 control of discovery to weed out unmeritorious claims sooner rather  
13 than later"). It appears that the Magistrate Judge tailored the  
14 discovery he allowed to the elements of the torts at issue. On the  
15 one hand, no tailoring beyond the general restraints of relevance is  
16 necessary unless a party with standing makes a proper objection. On  
17 the other hand, more particularized tailoring may be necessary if a  
18 proper objection is raised. In particular, to the extent that a  
19 party with standing raises a meritorious objection, Plaintiff should  
20 not be afforded discovery regarding the identity of any anonymous  
21 author where the exact statement at issue has not been put into  
22 evidence.<sup>16</sup> Nor is discovery warranted into the identity of an  
23 anonymous author where it is beyond reasonable dispute that the

24  
25  
26 here.

27 <sup>16</sup>For example, at present, neither the videos nor any detailed  
28 description of their contents is in the Court's record.

1 particular internet postings at issue are subject to a privilege or  
2 defense.

3  
4 **III. Conclusion**

5 **IT IS, THEREFORE, HEREBY ORDERED THAT** the motion (#22) to  
6 transfer this case to the Eastern District of Texas is **DENIED**.

7 **IT IS FURTHER ORDERED THAT** Dickie's objection (#124) is  
8 **SUSTAINED** to the extent stated in this Order. The Order of April 7,  
9 2008 (#111) is **VACATED** and the matter is **REMANDED** to the Magistrate  
10 Judge for further proceedings. Dickie's motion (#159) to file a  
11 reply brief is **DENIED** as moot.

12 The Magistrate Judge should withhold action for a reasonable  
13 period of time (1) to allow Dickie and TEAM to notify interested  
14 parties that, if they wish to do so, they may contest the discovery  
15 of their identities under pseudonyms, and (2) to allow any such  
16 party to file an opposition. Any party that raises an objection  
17 must demonstrate that he or she has standing to raise the objection.  
18 At present, no such showing has been made. The nature of any  
19 further proceedings that may be required is left to the Magistrate  
20 Judge's wise discretion.

21  
22  
23 DATED: This 7th day of July, 2008.

24   
25 \_\_\_\_\_  
26 UNITED STATES DISTRICT JUDGE  
27  
28

Exhibit 4

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA

QUIXTAR, INC.,	)	CASE NO. 3:07-CV-0505-ECR-RAM
	)	
Plaintiff(s),	)	MINUTES OF THE COURT
	)	
vs.	)	DATED: NOVEMBER 12, 2008
	)	
SIGNATURE MANAGEMENT	)	
TEAM, LLC d/b/a TEAM,	)	
	)	
Defendant(s).	)	

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PRESENT: HONORABLE ROBERT A. MCQUAID, JR., U.S. MAGISTRATE JUDGE

Deputy Clerk: Jennifer S. Cotter Reporter: Margaret Griener

Counsel for Plaintiff(s): Cedric Chao, James Cleland (telephonically), Miranda Du, and John Frankovich

Counsel for Defendant(s): Daniel LaCombe, and Erica Fitzgerald (telephonically)

Counsel for Subpoena Respondents: Daniel O'Brien, Michael McCormick, and Anthony Spaeth (telephonically)

PROCEEDINGS: HEARING RE: ANONYMOUS ONLINE SPEAKERS' OBJECTION (Docket #194), MOTION TO COMPEL FURTHER RESPONSES (Docket #201), and MOTION TO STRIKE (Docket #223)

9:00 a.m. Court convenes.

The Court addresses each matter in order and parties present oral argument as to their respective positions regarding said matters:

**Anonymous Online Speakers' Objection (Docket #194)**

The Court advises the parties that it does not believe there is a waiver in this case. The individuals who have objected do have standing. If their anonymity is taken away, they lose first amendment protection. The Court notes that Ben Dickie has stated he does not know the identity of the online speakers related to "TheChosenOnes", "IBO Minute Man", "Quixtar Is A Cult Intervention", and Free The IBO website. The Court addresses the remaining speakers applying the *Cahill* standard. *Doe v. Cahill*, 884 A.2d 451 (Del. 2005).

IT IS ORDERED that Mr. Dickie shall testify as to his knowledge of the identity of the speakers in

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November 12, 2008

the "Hooded Angry Man" video and the "Save Us Dick DeVos" blog, as the statements are presented as facts and can be considered defamatory.

IT IS FURTHER ORDERED that Mr. Dickie shall **not** be required to testify as to the identity of the speakers in the "IBO Rebellion" blog, the "Q'Reilly" blog, the "Integrity is Team" blog, and the "QSSR" blog, as the statements by these speakers are presented as opinions.

The Court and parties discuss the proposed order submitted by Plaintiff prior to the hearing. IT IS ORDERED that Mr. Chao shall prepare a new proposed order reflecting the occurrences of this proceeding and submit it to Mr. O'Brien for review. If there are disputes, the parties may bring said disputes back to the Court. Mr. McCormick suggests that, if there is not agreement as to the proposed order, Mr. Chao and Mr. O'Brien each prepare a proposed order and submit them both for the Court's decision. The Court agrees to this suggestion.

**Quixtar's Motion to Compel Further Responses to Its Second Set of Interrogatories and Second Set of Requests for Production of Documents (Docket #201)**

Ms. Du advises the Court that this motion has been resolved with respect to Interrogatory 20 and Requests for Production of Documents 116, 120, and 143-146.

With respect to Interrogatories 22-25, IT IS ORDERED that Quixtar shall be allowed to assert these as additional interrogatories with the condition that the time be limited from September, 2004 to the present. TEAM shall have thirty (30) days to respond to said interrogatories.

Regarding Requests for Production of Documents 114, 115, 122, 150, 151, and 158, IT IS ORDERED that the parties shall confer and narrow these requests to a point where TEAM will respond.

IT IS ORDERED that the Motion to Compel, as it relates to Interrogatory 18 and Requests for Production of Documents 117, 118, 129-133, 136-138, 141, 148, 153, 154-160, 161, and 162, is DENIED.

IT IS ORDERED that the Motion to Compel, as it relates to Interrogatory 19 and Requests for Production of Documents 119, 121, 123, 124, 125, 128, 139, 147, 149, 165, 168, and 169, is GRANTED to the extent as indicated on the record.

IT IS ORDERED that the Motion to Compel, as it relates to Requests for Production of Documents 135 and 152, is GRANTED IN PART AND DENIED IN PART pursuant to the terms placed on the record.

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Quixtar Inc. v. TEAM  
November 12, 2008

**Quixtar's Motion to Strike Reply Brief in Support of Anonymous Online Speakers' Objection  
and Opposition to Motion to Compel Responses from Benjamin Dickie (Docket #223)**

IT IS ORDERED that the Motion to Strike (Docket #223) is DENIED.

3:08 p.m. Court adjourns.

LANCE S. WILSON, CLERK

By: /s/

Deputy Clerk

Exhibit 5

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA

QUIXTAR, INC.,	)	3:07-CV-505-ECR-RAM
	)	
Plaintiff,	)	
	)	
vs.	)	<u>Order</u>
	)	
SIGNATURE MANAGEMENT TEAM, LLC	)	
d/b/a/ TEAM, APOLLO WORKS HOLDINGS,	)	
INC., GREEN GEMINI ENTERPRISES,	)	
INC., NORTH STAR SOLUTIONS, INC.,	)	
NORTHERN LIGHTS SERVICES, INC.,	)	
SUNSET RESOURCES, INC., and SKY	)	
SCOPE TEAM, INC.,	)	
	)	
Defendants.	)	

Plaintiff Quixtar, Inc. ("Quixtar") is a company that was formerly known as Amway. Defendant Signature Management TEAM ("TEAM") is a company that was started by former "Independent Business Operators" ("IBOs") of Quixtar. TEAM is a Nevada limited liability company that initially had six members, all of which were Nevada corporations, and which constitute the remaining six named defendants in this action.

Currently pending before the Court is "Five Constituent Defendants' Motion to Dismiss and for Summary Judgment" ("MTD") (#231), filed by Defendants Apollo Works Holdings, Inc., Green Gemini Enterprises, Inc., North Star Solutions, Inc., Northern Lights Services, Inc., and Sunset Resources, Inc. (collectively,



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1 "the constituent defendants"). Quixtar opposed (#239) the motion to  
2 dismiss, and the constituent defendants replied (#245). For the  
3 reasons stated below, the motion to dismiss (#231) will be granted.

4 Also pending before the Court are two sets of objections (##  
5 267, 269) to the Magistrate Judge's November 12, 2008 Minute Order  
6 (#261). The Minute Order (#261) addresses a discovery dispute  
7 between the parties regarding whether Mr. Benjamin Dickie must  
8 testify as to his knowledge of the identity of certain non-party  
9 anonymous online speakers who posted allegedly defamatory material  
10 on various websites and blogs. This dispute was previously the  
11 subject of a published Order (#167) by the Court, which vacated the  
12 Magistrate Judge's earlier Order (#111) on the issue and remanded  
13 for further proceedings. Quixtar Inc. v. Signature Mgmt. TEAM, 566  
14 F. Supp. 2d 1205 (D. Nev. 2008). For the reasons stated below, the  
15 objections filed by non-party anonymous online speakers (#267) will  
16 be overruled, while Quixtar's objections (#269) will be sustained in  
17 part and overruled in part.

18 Further, Defendants have objected (#306) to the Magistrate  
19 Judge's December 12, 2008 Minute Order (#295). Among other things,  
20 this Minute Order addressed Defendants' Motion to Compel (#242).  
21 Defendants object to the Magistrate Judge's ruling regarding two  
22 particular requests for production raised in the motion to compel,  
23 Request 29 and Request 42. (D.s' Objection 2 (#306).) For the  
24 reasons stated below, this objection will be overruled.

25 Finally, pending before the Court are two sets of objections  
26 (## 342, 343) to the Magistrate Judge's January 15, 2009 Order  
27 (#330). Like the November 12, 2008 Minute Order (#261), this Order

28

1 (#330) deals with the deposition of Mr. Dickie. Paragraphs 2(D), 3  
2 and 4 of the Order (#330) incorporate the provisions of the November  
3 12, 2008 Minute Order (#261) at issue in the objections (## 267,  
4 269) described above. Our ruling in this Order on the objections  
5 (##267, 269) to the Magistrate Judge's November 12, 2008 Minute  
6 Order (#261) will apply equally to the analogous provisions of the  
7 Magistrate Judge's later Order (#330). Other provisions of the  
8 Magistrate Judge's Order (#330), however, have been separately  
9 disputed: objections have been filed by both Mr. Dickie (#342) and  
10 Defendants (#343). For the reasons stated below, these objections  
11 will be sustained in part and overruled in part.

12

13

#### I. Background

14

15 Quixtar contends that TEAM has waged a wrongful, illegal  
16 internet campaign to induce Quixtar's IBOs to defect from Quixtar.  
17 Quixtar's initial complaint (#1) was filed on October 23, 2007,  
18 naming TEAM as the sole defendant. Quixtar filed its first amended  
19 complaint (#203) on August 20, 2008, bringing the remaining six  
20 named defendants into the case and asserting an additional cause of  
21 action. The first amended complaint (#203) states causes of action  
22 for (1) violation of the Lanham Act, (2) trade secret  
23 misappropriation, (3) tortious interference with existing contracts,  
24 (4) tortious interference with advantageous business relations, (5)  
25 civil conspiracy, and (6) a declaratory judgment regarding the  
26 viability of claims brought by TEAM against Quixtar in Collin County  
27 Texas. The parties have stipulated (#347) to dismissal with  
28 prejudice of TEAM's counterclaims (#15) against Quixtar.

28

1 II. Motion to Dismiss

2 The constituent defendants filed their motion to dismiss (#231)  
3 on September 18, 2008. The basis for this motion is a change in the  
4 corporate status of the constituent defendants. On February 13,  
5 2008, the constituent defendants were merged into Sky Scope Team,  
6 Inc. ("Sky Scope") pursuant to Nev. Rev. Stat. § 92A.200.  
7 ("Articles of Merger," MTD (#231) Ex. A.) The merger left Sky Scope  
8 the sole remaining member of TEAM.

9 The constituent defendants argue that as a result of the merger  
10 they lack the capacity to be sued. Thus, the moving parties argue,  
11 Quixtar's First Amended Complaint fails to state a claim against  
12 them, and they are entitled to dismissal pursuant to Fed. R. Civ. P.  
13 12(b)(6). Further, the constituent defendants assert that because  
14 they no longer exist, the Court lacks personal jurisdiction over  
15 them and, moreover, they could not be served with process. On that  
16 basis, the constituent defendants seek dismissal pursuant to Fed. R.  
17 Civ. P. 12(b)(2) and Fed. R. Civ. P. 12(b)(5). Finally, the  
18 constituent defendants seek summary judgment on the claims asserted  
19 against them, arguing that Quixtar has no evidence in support of its  
20 allegations.

21 Quixtar filed its opposition (#239) to the motion to dismiss  
22 (#231) on October 6, 2008. Quixtar argues that the constituent  
23 defendants are subject to suit under Nevada law despite the merger  
24 with Sky Scope and that the first amended complaint asserts viable  
25 claims against them. Quixtar further argues that the Court does not  
26 lack personal jurisdiction, nor was service of process insufficient.

1 Finally, Quixtar argues that summary judgment is premature because  
2 discovery against the constituent defendants has "barely commenced."

3 We will address only the issue of whether Quixtar has failed to  
4 state a claim against the constituent defendants because our ruling  
5 on that issue is dispositive. For the reasons discussed below, we  
6 find that the constituent defendants lack the capacity to be sued  
7 under Nevada law, and the claims against them therefore must be  
8 dismissed.

9 A. Motion to Dismiss Standard

10 A motion to dismiss under Fed. R. Civ. P. 12(b)(6) will only be  
11 granted if the complaint fails to "state a claim to relief that is  
12 plausible on its face." Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955,  
13 1974 (2007). On a motion to dismiss, "we presum[e] that general  
14 allegations embrace those specific facts that are necessary to  
15 support the claim." Lujan v. Defenders of Wildlife, 504 U.S. 555,  
16 561 (1992) (quoting Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 889  
17 (1990)) (alteration in original). Moreover, "[a]ll allegations of  
18 material fact in the complaint are taken as true and construed in  
19 the light most favorable to the non-moving party." In re Stac  
20 Elecs. Sec. Litig., 89 F.3d 1399, 1403 (9th Cir. 1996) (citation  
21 omitted).

22 Although courts generally assume the facts alleged are true,  
23 courts do not "assume the truth of legal conclusions merely because  
24 they are cast in the form of factual allegations." W. Mining  
25 Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). Accordingly,  
26 "[c]onclusory allegations and unwarranted inferences are

27

28

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1 insufficient to defeat a motion to dismiss." In re Stac Elecs., 89  
2 F.3d at 1403 (citation omitted).

3 Review on a motion pursuant to Fed. R. Civ. P. 12(b)(6) is  
4 normally limited to the complaint itself. See Lee v. City of L.A.,  
5 250 F.3d 668, 688 (9th Cir. 2001). If the district court relies on  
6 materials outside the pleadings in making its ruling, it must treat  
7 the motion to dismiss as one for summary judgment and give the non-  
8 moving party an opportunity to respond. Fed. R. Civ. P. 12(d);  
9 see United States v. Ritchie, 342 F.3d 903, 907 (9th Cir. 2003). "A  
10 court may, however, consider certain materials – documents attached  
11 to the complaint, documents incorporated by reference in the  
12 complaint, or matters of judicial notice – without converting the  
13 motion to dismiss into a motion for summary judgment." Ritchie, 342  
14 F.3d at 908.

15 If documents are physically attached to the complaint, then a  
16 court may consider them if their "authenticity is not contested" and  
17 "the plaintiff's complaint necessarily relies on them." Lee, 250  
18 F.3d at 688 (citation, internal quotations, and ellipsis omitted).  
19 A court may also treat certain documents as incorporated by  
20 reference into the plaintiff's complaint if the complaint "refers  
21 extensively to the document or the document forms the basis of the  
22 plaintiff's claim." Ritchie, 342 F.3d at 908. Finally, if  
23 adjudicative facts or matters of public record meet the requirements  
24 of Fed. R. Evid. 201, a court may judicially notice them in deciding  
25 a motion to dismiss. Id. at 909; see Fed. R. Evid. 201(b) ("A  
26 judicially noticed fact must be one not subject to reasonable  
27 dispute in that it is either (1) generally known within the  
28

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1 territorial jurisdiction of the trial court or (2) capable of  
2 accurate and ready determination by resort to sources whose accuracy  
3 cannot reasonably be questioned.").

4 B. Discussion

5 A corporation's capacity to sue or be sued is determined by the  
6 law under which it was organized. FED. R. CIV. P. 17(b); see, e.g.,  
7 Sierra Ass'n for Env't v. Fed. Energy Regulatory Comm'n, 744 F.2d  
8 661, 662 (9th Cir. 1984). All the constituent defendants were  
9 Nevada corporations, thus, Nevada law applies here.

10 Under Nevada law, "[e]very corporation, by virtue of its  
11 existence as such, is entitled . . . [t]o sue and be sued in any  
12 court of law or equity." NEV. REV. STAT. § 78.060(2)(b). After a  
13 merger, however, "[e]very other entity that is a constituent entity  
14 merges into the surviving entity and the separate existence of every  
15 entity except the surviving entity ceases." NEV. REV. STAT. §  
16 92A.250(1)(a). The logical conclusion that follows from these two  
17 premises is that after a merger, the constituent entities lack the  
18 capacity to later sue or be sued because they no longer exist.<sup>1</sup>

19 In February 2008, the constituent defendants were merged with  
20 Sky Scope by means of Articles of Merger filed with the Nevada  
21 Secretary of State pursuant to Nevada Revised Statutes Chapter 92A.  
22 (MTD Ex. A (#231).) Quixtar's first amended complaint was filed in  
23 August 2008. Under Nevada law, in August 2008 the constituent

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24  
25 <sup>1</sup> An action that is already "pending against any constituent  
26 entity may be continued as if the merger had not occurred or the  
27 surviving entity may be substituted in the proceeding for the entity  
whose existence has ceased." NEV. REV. STAT. § 92A.250(d). This  
provision does not apply, however, to actions brought against the  
constituent entity only after the merger.

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1 defendants no longer existed as separate corporate entities. We  
2 conclude that they therefore lacked the capacity to sue or be sued.

3 Quixtar argues that Nev. Rev. Stat. § 78.585 applies here, and  
4 provides that the constituent corporation "continues as a body  
5 corporate for the purpose of prosecuting and defending suits . . .  
6 ." This statute, however, deals with the dissolution and winding up  
7 of a corporation, not merger. It is therefore inapplicable to the  
8 facts of the present case.<sup>2</sup>

9 Quixtar expresses concern that if the pending motion to dismiss  
10 is granted, the constituent corporations "might be permitted to  
11 insulate themselves (and their co-conspirators) from liability and  
12 deny Quixtar rights to satisfy a judgment." (P.'s Opp. 1 (#239).)  
13 This concern is not warranted. By law, all liabilities of a  
14 constituent corporation pass to the surviving corporation. NEV. REV.  
15 STAT. § 92A.250(1)(c); see Lamb v. Leroy Corp., 454 P.2d 24, 26  
16 (Nev. 1969) ("A consummated agreement of merger or consolidation  
17 imposes upon the surviving corporations all liabilities of the  
18

19 <sup>2</sup> Quixtar also cites to authority supporting the notion that "in  
20 some cases there may be special equitable considerations for not  
21 barring [a post-merger] derivative claim." (P.'s Opp. 12 (#239)  
22 (quoting Evmar Oil Corp. v. Getty Oil Co., No. 76-4039, 1978 U.S.  
23 Dist. LEXIS 18957, at \*31-32 (C.D. Cal. Mar. 17, 1978), and citing  
24 Miller v. Steinbach, 268 F. Supp. 255, 267 (S.D.N.Y. 1967)); see also  
25 P.'s Opp. 10 (#239) (citing Smallwood v. Pearl Brewing Co., 489 F.2d  
26 579, 592 (5th Cir. 1974) (assuming without deciding that a merged  
27 corporation had capacity to be sued in a derivative action).) The  
28 present case, however, is not a derivative suit. Moreover, the Nevada  
Supreme Court has rejected the approach taken in Evmar Oil Corp.,  
Miller, and Smallwood. See Cohen v. Mirage Resorts, Inc., 62 P.3d  
720, 732 (Nev. 2003) (noting that a former shareholder does not have  
standing to assert a derivative claim, though the former shareholder  
does have standing to seek relief for direct injuries that are  
independent of any injury suffered by the corporation). Thus,  
Quixtar's arguments in this regard also fail.

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1 constituent corporations so merged or consolidated."). Any rights  
2 that Quixtar could have asserted against the constituent defendants  
3 absent the merger can instead be asserted against Sky Scope as the  
4 surviving entity after the merger. There is no basis for concluding  
5 that this transfer of liability to the surviving entity would not  
6 include liability for conspiracy or for fraudulent conveyance,  
7 Quixtar's suggestion to the contrary notwithstanding.

8 In short, under Nevada law, after a business entity merges into  
9 another, the constituent entity cannot later sue or be sued because  
10 the separate existence of every entity except the surviving entity  
11 ceases. All liabilities of the constituent entity, however, survive  
12 the merger, and are the responsibility of the surviving entity. The  
13 discovery with regard to Quixtar's claims against the constituent  
14 defendants that has, according to Quixtar, "barely commenced,"  
15 should therefore proceed. Those claims are still a part of this  
16 case. The sole, nominal difference is that the corporate entity  
17 that is liable for the alleged wrongful acts by the constituent  
18 defendants is Sky Scope.

19

20 **III. Objections to November 12, 2008, Minute Order (#261)**

21 In connection with Quixtar's causes of action for tortious  
22 interference with business relations and tortious interference with  
23 an existing contract, Quixtar took TEAM employee Benjamin Dickie's  
24 deposition on January 18, 2008. Mr. Dickie testified that as part  
25 of his employment responsibilities, he had a role in maintaining  
26 certain TEAM websites and blogs. He refused, however, to answer any  
27 questions regarding whether he had any role in establishing or

28



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1 maintaining certain other websites and blogs. He further refused to  
2 answer whether he knew the identity of certain anonymous online  
3 speakers who posted text and videos on these sites. Quixtar brought  
4 a motion to compel (#54) responses from Mr. Dickie, which was  
5 granted by a February 21, 2008 Order (#71) by the Magistrate Judge,  
6 and subsequently clarified by an April 7, 2008 Order (#111).

7 After our Order (#167) vacated the Magistrate Judge's Order  
8 (#111), the Magistrate Judge held a hearing on November 12, 2008,  
9 and then issued the Minute Order (#261) that is the subject of the  
10 pending objections. The Magistrate Judge found that Mr. Dickie did  
11 not know the identity of four anonymous online speakers about whom  
12 Plaintiff had sought discovery. (Hearing Tr., p. 9, Ex. A to  
13 Objections (#267).) The Magistrate Judge then addressed whether Mr.  
14 Dickie had to testify as to his knowledge of six other anonymous  
15 online speakers.

16 In the Minute Order (#261), the Magistrate Judge ruled that Mr.  
17 Dickie shall testify as to his knowledge of two of the anonymous  
18 online speakers; the anonymous online speakers have objected (#267).  
19 The Magistrate Judge further ordered that Mr. Dickie shall not be  
20 required to testify regarding the identity of four other anonymous  
21 online speakers; Quixtar has objected (#269) with regard to three of  
22 those four speakers.

23 A. Standard of Review

24 "A district judge may reconsider any pretrial matter referred  
25 to a magistrate judge in a civil or criminal case pursuant to LR IB  
26 1-3 where it has been shown that the magistrate judge's ruling is  
27 clearly erroneous or contrary to law." Local Rule IB 3-1; see 28

28

1 U.S.C. § 636(b)(1)(A). The "contrary to law" standard only applies  
2 to the Magistrate Judge's legal conclusions, which are reviewed de  
3 novo. See Osband v. Woodford, 290 F.3d 1036, 1041 (9th Cir. 2002).

4 B. Discussion

5 The two anonymous online speakers whose identity would be  
6 revealed under the Magistrate Judge's Minute Order (#261) object  
7 (#267) that their speech, and in particular the anonymity of their  
8 speech, is protected by the First Amendment. Quixtar objects to the  
9 Magistrate Judge's determination that Mr. Dickie shall not be  
10 required to testify as to the identities of three other anonymous  
11 online speakers.

12 We noted in our published Order (#167) that courts "must adopt  
13 procedures that strike a balance between the plaintiff's need to  
14 destroy [an anonymous speaker's] anonymity and the anonymous  
15 speaker's First Amendment rights." Quixtar, 566 F. Supp. 2d at  
16 1211. We found that Doe v. Cahill, 884 A.2d 451 (Del. 2005),  
17 "articulates the correct standard" for performing this balancing.  
18 Quixtar, 566 F. Supp. at 1216.<sup>3</sup>

19 The Cahill standard requires that a plaintiff seeking discovery  
20 of the identity of a non-party anonymous online speaker first give  
21 notice to the speaker, or at least attempt to do so. Id. at 1212-13  
22 (citing Cahill, 884 A.2d at 460-61). Then the plaintiff must  
23 satisfy a "prima facie or 'summary judgment'" standard, analyzing

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24  
25 <sup>3</sup> Cahill involved defamation claims, whereas here Quixtar asserts  
26 claims for tortious interference with existing contracts and tortious  
27 interference with advantageous business relations. The particular  
28 tortious acts giving rise to Quixtar's claims, however, are allegedly  
defamatory statements. The First Amendment, therefore, is similarly  
implicated. See Quixtar, 566 F. Supp. 2d at 1205.

1 the actionability of the statements at issue on the basis of  
2 evidence that is or should be in the plaintiff's control.<sup>4</sup> Id.  
3 Here, notice was given, so only the second of these requirements is  
4 at issue. To satisfy this second step of the Cahill analysis, a  
5 plaintiff must prove that the "statement is factually based and thus  
6 capable of a defamatory meaning." 884 A.2d at 467 n.78; see Pegasus  
7 v. Reno Newspapers, Inc., 57 P.3d 82, 87 (Nev. 2002) (defining  
8 defamation as "a publication of a false statement of fact").

9 In making the determination of whether a statement can  
10 reasonably be interpreted as a factual assertion, and thus  
11 potentially defamatory, the court must examine the "totality of the  
12 circumstances in which it was made." Underwager v. Channel 9  
13 Australia, 69 F.3d 361, 366 (9th Cir. 1995); see also Pegasus, 118  
14 P.3d at 88 (noting that under Nevada defamation law "comments must  
15 be considered in context"). In performing this analysis, we first  
16 "look at the statement in its broad context, which includes the  
17 general tenor of the entire work, the subject of the statements, the  
18 setting, and the format of the work." Knieval v. ESPN, 393 F.3d  
19 1068, 1075 (9th Cir. 2005).

20 Second, "we turn to the specific context and content of the  
21 statements, analyzing the extent of figurative or hyperbolic  
22 language used and the reasonable expectations of the audience in  
23

---

24 <sup>4</sup> We agree with the sentiment expressed in Krinsky v. Doe 6, 72  
25 Cal. Rptr. 3d 231, 244 (Cal. Ct. App. 2008), that "it is unnecessary  
26 and potentially confusing to attach a procedural label . . . to the  
27 showing required of a plaintiff seeking the identity of an anonymous  
28 speaker on the Internet." We will therefore use the term "prima  
facie," rather than "summary judgment," though Cahill used the terms  
interchangeably.

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1 that particular situation." Id. Even where the broad context tends  
2 to weigh in favor of the conclusion that a statement is protected  
3 opinion, the specific context or phrasing of a particular statement  
4 may imply an actionable assertion of objective fact. Partington v.  
5 Bugliosi, 56 F.3d 1147, 1153 (9th Cir. 1995). Nonetheless, where  
6 the language used is "loose, figurative [and] hyperbolic," this  
7 tends to negate the impression that a statement contains an  
8 assertion of verifiable fact, and is instead non-actionable opinion  
9 or mere rhetoric. See Milkovich v. Lorain Journal Co., 497 U.S. 1,  
10 21 (1990).

11 Finally, "we inquire whether the statement itself is  
12 sufficiently factual to be susceptible of being proved true or  
13 false." Id. Whether a particular product works or doesn't, for  
14 example, is provably true or false. See Unelko Corp. v. Rooney, 912  
15 F.2d 1049, 1055 (9th Cir. 1990). A statement that implies a  
16 verifiable assertion of perjury is similarly subject to being proven  
17 true or false. See Underwager, 69 F.3d at 367 ("While we agree that  
18 [defendant's] statement may be an exaggeration, [plaintiff] has  
19 failed to show that the statement implies a verifiable assertion of  
20 perjury.").

21 The parties identified the specific statements at issue in an  
22 exhibit to a joint proposed scheduling order. (Scheduling Order,  
23 Ex. A ("Ex. A") (#183).) We will analyze each of the statements in  
24 turn. Whether a particular statement is potentially defamatory or  
25 not is a question of law. Rodriguez v. Panayiotou, 314 F.3d 979,  
26 985 (9th Cir. 2002). We therefore review de novo the Magistrate  
27 Judge's determinations.

28

1                    1. "Save Us Dick DeVos" Blog

2                    Quixtar has complained of the following statements from the  
3 "Save Us Dick DeVos" blog:

4                    Quixtar has regularly, but secretly, acknowledged that its  
5 products are overpriced and not sellable. . . . Quixtar is  
6 aware of, approves, promotes, and facilitates the systematic  
7 noncompliance with the FTC's Amway rules . . . . Quixtar knows  
8 that it violates the Amway rules and has disregarded this fact  
9 for years.

10 (Ex. A, No. 5.) The Magistrate Judge determined that these  
11 statements are "presented as facts and can be considered  
12 defamatory." (Minute Order 2 (#261).) On this basis, the  
13 Magistrate Judge ordered that Mr. Dickie shall testify as to his  
14 knowledge of the identity of the speaker. Id. The anonymous online  
15 speaker has objected that the blog post at issue here cannot  
16 "reasonably be interpreted as stating actual facts." (Objection 6  
17 (#267).)

18                    The basis for the anonymous speaker's objection here is that  
19 the post in question only "refers to quotes [the blogger] read on  
20 another website," and expresses "no claim of accuracy beyond his own  
21 belief and experience." (Objection 6 (#267).) It is well  
22 established, however, that a person who repeats a defamatory  
23 statement "is generally as liable as the one who first utters it."  
24 Flowers v. Carville, 310 F.3d 1118, 1128 (9th Cir. 2002).

25                    Moreover, the statements at issue here can reasonably be  
26 interpreted as declaring or at least implying provable assertions of  
27 fact, either of which is actionable. See Milkovich, 497 U.S. at 19  
28 (noting that expressions of opinion may imply an assertion of  
objective fact, and that in such a circumstance they may give rise

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1 to liability for defamation). It may be the case that the broad  
2 context of the statement – on a blog that makes no pretense of  
3 objectivity regarding the Quixtar/TEAM dispute – weighs in the  
4 blogger's favor. This factor is outweighed, however, by other  
5 considerations, once the totality of circumstances are taken into  
6 account. The specific context of the statement is a quotation from  
7 another website, accompanied by the commentary of the blogger that  
8 the statements "sound truthful." A reasonable reader could conclude  
9 on this basis that the statements are intended as, or at least  
10 imply, assertions of fact, rather than opinion or mere rhetoric.  
11 Further, the statements of which Quixtar complains are susceptible  
12 to being proven true or false. Thus, the Cahill prima facie  
13 standard is satisfied, and the Magistrate Judge was correct to order  
14 Mr. Dickie to testify as to the identity of the anonymous speaker.<sup>5</sup>

15 In short, the Magistrate Judge's ruling that a Cahill prima  
16 facie showing has been made with regard to these statements was  
17 neither clearly erroneous nor contrary to law. Thus, the objection  
18 will be overruled.

19

20

21

22

23 <sup>5</sup> The anonymous online speaker also objects that there is  
24 insufficient evidence of causation to make a prima facie case for  
25 defamation. For purposes of the limited analysis to be performed at  
26 this stage, however, the declaration of Mr. VanderVen (P.'s Opp., Ex.  
27 A ¶ 5 (#212)), asserting that Quixtar has been injured by the various  
28 statements at issue, is sufficient: It constitutes at least some  
evidence of causation, which is all that is needed to make the  
necessary prima facie showing. The anonymous online speaker's  
objections on this basis too, therefore, will be overruled.

28

1                   2. "Hooded Angry Man" Video

2           Quixtar has complained of the following three statements from  
3 the video titled "Hooded Angry Man," which was posted on the  
4 internet:

5           Quixtar's "high prices crippled IBO's ability to sell at retail  
6 prices,"

7           Quixtar "terminated IBOs without due process,"

8           Quixtar "refused to pay year end bonuses to IBOs in good  
standing."

9 (Ex. A, No. 2.) The Magistrate Judge determined that these  
10 statements, too, were presented as facts and could be considered  
11 defamatory, and therefore ordered Mr. Dickie to testify as to his  
12 knowledge of the speaker's identity. (Minute Order 2 (#261).)

13           The anonymous online speaker argues that these statements,  
14 "viewed as a whole and in context," given the "amateurish and  
15 comical" nature of the video, could not be viewed by a reasonable  
16 person as stating "actual facts about Quixtar." We disagree.

17           The Magistrate Judge correctly noted that though the video as a  
18 whole may have a humorous tone, there is an core of (alleged) fact  
19 at the center of the jokes: "all the laughter and jokes were gone  
20 from [the portion in which these statements were made], they played  
21 that as a fact . . . the context shows that the reader is encouraged  
22 to believe that those ten items which were all negative about  
23 Quixtar were all fact." (Hearing Tr., p. 35, Ex. A to Objections  
24 (#267).) In other words, the broad context of the statements in a  
25 humorous video factors into the analysis in favor of the anonymous  
26 speaker. The specific context of the statements, however, shows  
27 that they may reasonably be interpreted as set apart from the rest

1 of the video and best understood as assertions of fact, rather than  
2 opinion, hyperbole or mere rhetoric. Moreover, the statements are  
3 capable of being proven true or false. The totality of the  
4 circumstances, therefore, supports a finding that the statements  
5 could be considered defamatory. Because the Magistrate Judge's  
6 ruling with regard to these statements was neither clearly erroneous  
7 nor contrary to law, the objection will be overruled.

8           3. "Integrity is Team" Blog

9           Quixtar has complained of the following statement from the  
10 "Integrity is Team" blog: "Quixtar currently suffers from systemic  
11 dishonesty. There is a pattern of deceit that emanates from its  
12 core." (Ex. A, No. 7.) The Magistrate Judge found that this  
13 statement was not actionable and therefore ordered that Mr. Dickie  
14 shall not be required to testify as to the identity of the speaker.  
15 (Minute Order 2 (#261).)

16           The Magistrate Judge agreed with Quixtar that "taken out of  
17 context, just the statement itself, it probably is defamatory."  
18 (Hearing Tr., p. 49, Ex. A to Objections (#267).) Nevertheless, the  
19 Magistrate Judge determined that "taken in context with everything  
20 else that's in that paragraph that it can be considered as fact, I  
21 think it's opinion, and it's the order that Mr. Dickie not testify  
22 about that." (Id.) Quixtar has objected, arguing that the  
23 statements are not protected opinion because they imply assertions  
24 of objective fact. (P.'s Objections 4-7 (#269).)

25           As noted above, Quixtar is correct that after Milkovich it is  
26 well established that a statement may be defamatory, even though it  
27 is couched as opinion, if it implies an assertion of objective fact.



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1 497 U.S. at 19. Nevertheless, though the Magistrate Judge did not  
2 fully articulate the standard underlying his analysis, it appears  
3 that he did look appropriately to the totality of the circumstances  
4 in which the statement was made. See Knievel, 393 F.3d at 1075;  
5 Underwager, 69 F.3d at 366.

6 The broad context of the statement on the "Integrity is TEAM"  
7 blog weighs in favor of the conclusion that the statements are the  
8 author's opinion, rather than an assertion of objective fact. (See  
9 P.'s Objections (#269) Ex. A.) The blogger makes no bones about  
10 being a partisan in an ongoing dispute with Quixtar; there is no  
11 pretension of objectivity. Id. Thus, the broad context for the  
12 statement is much more like the opinion page of a newspaper than the  
13 front page. See Cochran v. NYP Holdings, Inc., 58 F. Supp. 2d 1113,  
14 1123 (C.D. Cal. 1998) (noting that alleged defamatory statement is  
15 "formatted as opinion rather than as a standard news article").

16 The anonymous online speaker's speech is quite loose,  
17 figurative and hyperbolic: the post is titled "Behind the Walls of  
18 Quixtar Part 4," and imagery of war continues throughout the text,  
19 albeit sporadically and mixed in with other unrelated metaphors and  
20 analogies. (P.'s Objections (#269) Ex. A.) Though the speaker  
21 purports to present "information" gleaned from reconnaissance  
22 conducted behind the lines of the "battle" between TEAM and Quixtar,  
23 the overall tone of the post leads the reasonable reader of the post  
24 to understand that they are being presented with the anonymous  
25 speaker's opinions, rather than objective facts. (Id.)

26 Further, it is doubtful that the statement itself is  
27 susceptible to being proven true or false. Whether or not Quixtar

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1 "suffers from systemic dishonesty" or has demonstrated "a pattern of  
2 deceit that emanates from its core" is very much in the eye of the  
3 beholder. The statement is not one of objective, provable fact, but  
4 rather is better considered "nonactionable 'rhetorical hyperbole, a  
5 vigorous epithet'" used by a speaker who considers Quixtar to be  
6 "'extremely unreasonable'" Underwager, 69 F.3d at 367 (quoting  
7 Milkovich, 497 U.S. at 17).

8 In short, the Magistrate Judge's determination that the  
9 statement, in its original context and taking into account the  
10 totality of the circumstances, is not actionable was neither clearly  
11 erroneous nor contrary to law. Thus, Quixtar's objection in regard  
12 to the Magistrate Judge's ruling regarding this statement will be  
13 overruled.

14 4. "Q'Reilly" Blog

15 Quixtar has complained that the "Q'Reilly" blog contains the  
16 following statement: "[Quixtar has] [r]efuse[d] to pay bonuses to  
17 IBOs in good standing and claim[ed] the bonuses are  
18 'discretionary[.]'" (Ex. A, No. 6.) The Magistrate Judge found  
19 that, in context and without the bracketed alterations, the  
20 statements by the anonymous speaker were not actionable and  
21 therefore denied discovery with regard to the speaker's identity.  
22 (Minute Order 2 (#261).)

23 The broad context of this statement is the "Q'Reilly" blog.  
24 (P.'s Objections (#269) Ex. B.) Like the other blogs discussed  
25 above, the "Q'Reilly" blog makes little if any attempt to appear  
26 objective regarding the ongoing dispute between Quixtar and TEAM.  
27 For similar reasons, therefore, we conclude that the broad context

28

1 of the statement weighs in favor of the conclusion that the  
2 statement is non-actionable opinion.

3       The specific context of this statement is a blog post in which  
4 the anonymous online speaker ponders the following question: "What  
5 are the top three things you would do (in the U.S. market) if you  
6 were [Amway/Quixtar] and wanted to get rid of your IBO sales force  
7 and start selling directly to the public from the store shelves?"  
8 (Id.) The blog writer then goes on to suggest some ideas to "get  
9 you started," the fifth of which is "Refuse to pay bonuses to IBO's  
10 [sic] in good standing (and claim the bonuses are discretionary)."  
11 (Id.) Just before asking and answering the above-described  
12 question, the anonymous speaker remarks that certain things have  
13 occurred that make one "wonder what these [Amway/Quixtar] folks are  
14 up to. My guess? . . . Getting rid of all those pesky IBO's [sic]."  
15 (Id.) (ellipses in original.)

16       The "suggestions" of the anonymous online speaker are not  
17 phrased in language that is particularly loose, figurative or  
18 hyperbolic, though some of the phrasing may fall into the last  
19 category. Nevertheless, the language is not obviously purely  
20 rhetorical. In context, a fair implication of the "suggestions"  
21 proposed by the anonymous speaker is that Quixtar is indeed engaging  
22 in such behavior, though the blogger frames his list of "moronic  
23 moves" as a hypothetical.

24       If the blogger's "suggestion" is treated as an implied  
25 assertion that Quixtar is indeed engaging in such behavior, the next  
26 question is whether the implied statement is susceptible to being  
27 proven true or false. The implied statement would be that Quixtar

1 refused to pay bonuses to IBOs in good standing and then claimed  
2 that the bonuses were discretionary. This statement is susceptible  
3 to being proven true or false – though the concept of an “IBO in  
4 good standing” might be somewhat fuzzy, it would be generally  
5 capable of definition. The rest of the statement is easily  
6 demonstrated true or false: Quixtar either paid bonuses or it did  
7 not; it either claimed bonuses are “discretionary” or it did not.

8 In sum, two of the three factors to be considered weigh in  
9 favor of finding this statement potentially actionable. The test is  
10 not a mathematical one, but in our view, those two factors weigh  
11 more heavily than the other here. Looking at the totality of the  
12 circumstances, though the statement is framed as an opinion, it  
13 fairly may be read to imply an assertion of objective fact. We  
14 conclude that the Magistrate Judge erred in ruling otherwise, and  
15 Quixtar’s objection with regard to this statement will therefore be  
16 sustained. Quixtar should be permitted to discover the identity of  
17 the anonymous online speaker who posted this statement to the  
18 “Q’Reilly” blog.

19 5. “IBO Rebellion” Blog

20 Quixtar has complained of the following statements from the  
21 “IBO Rebellion” blog:

22 It sounds as though the roof is caving in on Quixtar. I am  
23 sure these resignations will pave the way for a mass exodus.  
24 All of the above [TEAM] leaders are very well respected and  
25 their departure is sure to influence others to follow suit.”

26 [Alticor, Quixtar’s parent company,] will milk you for all your  
27 worth, methodically destroy your business, and then without  
28 warning pull the plug.

1 (Ex. A, No. 4.) The Magistrate Judge found that these statements  
2 were non-actionable opinions, rather than potentially defamatory  
3 assertions of fact.

4 Again, the broad context of these statements is a blog that  
5 makes no pretense to objectivity in the dispute between Quixtar and  
6 the IBOs. The blog's title sets this tone, which is continued in  
7 the mission statement, albeit with the disclaimer that comedic  
8 effect, rather than advocacy per se, is intended: "This blog is an  
9 attempt to add some comedic relief to the serious battle between  
10 IBOs and the Alticor/Quixtar/Amway group of companies. The opinions  
11 expressed here are my own and of other guest bloggers. There is a  
12 strong emphasis on satire and tongue in cheek comedy." (P.'s  
13 Objections (#269) Ex. C.) As noted above, however, such framing of  
14 a blog does not necessarily mean that a statement contained therein  
15 is incapable of being defamatory.

16 The two statements about which Quixtar complains are from two  
17 separate posts to the "IBO Rebellion" blog. The first comes from a  
18 short September 9, 2007 post titled "Team Resignations Add Up." The  
19 blogger lists a number of recent resignations from Quixtar,  
20 apparently of IBOs, and then adds the comment cited above that  
21 begins "It sounds as though the roof is caving in on Quixtar."

22 Quixtar urges that this statement should be interpreted as an  
23 act of tortious interference, encouraging other IBOs to leave  
24 Quixtar. It is not an entirely unreasonable supposition that a blog  
25 titled "IBO Rebellion" would support IBOs leaving Quixtar. The  
26 particular statement at issue, however, does not on its face urge  
27 IBOs to leave. Rather, the post presents the blogger's

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1 interpretation of events: though he or she is "sure" that the  
2 resignations are the first wave of a "mass exodus" and will  
3 "influence others to follow suit," there is no explicit exhortation  
4 for other IBOs to do so. Moreover, the loose, metaphorical language  
5 of the post ("roof is caving in on Quixtar") supports the  
6 interpretation that the assertions here are protected opinion, not  
7 potentially defamatory assertions of fact.

8       Even if the statement is an implied assertion of fact in some  
9 sense, it is not of the sort that is provably true or false: the  
10 boundary between a few resignations and a "mass exodus" is too  
11 subjective to be susceptible to such a determination; the meaning of  
12 "the roof caving in" is similarly indistinct. Whether or not the  
13 resignations in fact lead to further resignations is perhaps  
14 susceptible to analysis, but only in hindsight: the blogger's  
15 certainty that they will lead to future resignations is not provably  
16 true or false, but rather constitutes a subjective opinion in the  
17 form of speculation about future events.

18       The second statement of which Quixtar complains is from a  
19 longer, November 25, 2007 blog post titled "Traitorous Actions  
20 Accumulate @ Alticor." The paragraph in which the statement is  
21 contained begins: "Alticor's actions toward IBOs is undermining and  
22 traitorous." The paragraph goes on to detail various things the  
23 blogger believes Alticor is doing to "undermine" the IBOs, and ends  
24 with the warning that rather than just buy "you" (the IBO) out,  
25 "they will milk you for all your [sic] worth, methodically destroy  
26 your businesses, and then without warning pull the plug."

27

28

1 The language of this post is loose, figurative, and hyperbolic.  
2 The particular statement of which Quixtar complains is not only  
3 metaphorical, it mixes several metaphors. We conclude that this  
4 string of colorful language is not reasonably understood as an  
5 assertion of fact, direct or implied. Any reasonable reader would  
6 conclude that the blogger is simply weighing in on the dispute  
7 between Quixtar and the IBOs and that the statements are rhetorical  
8 expressions of the blogger's opinion regarding that conflict, rather  
9 than assertions of fact to be taken literally.

10 Moreover, the statement at issue is not susceptible to being  
11 proven true or false. There is no core of objective truth the Court  
12 could look to in order to determine whether the IBOs are being,  
13 were, or will be "milked for all [they're] worth." The distinction  
14 between methodically destroying someone's business and then without  
15 warning "pull[ing] the plug," on the one hand, and engaging in  
16 proper, albeit somewhat aggressive, business practices, on the  
17 other, is at least partially, if not entirely, subjective. In  
18 short, we agree with the Magistrate Judge that these statements are  
19 protected opinion, rather than potentially actionable assertions of  
20 fact.

21 Quixtar argues that even if the statements in the "IBO  
22 Rebellion" blog are not themselves actionable, discovery of the  
23 anonymous author's identity should be allowed because of that  
24 information's relevance to the causation element of Quixtar's  
25 tortious interference claims against other speakers. (P.'s  
26 Objections 10 (#269).) We disagree. First, we fail to see any such  
27 relevance. Even if the statement itself may be relevant evidence of

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1 causation, there would be little, if any, additional probative value  
2 garnered by revealing the anonymous speaker's identity. Second,  
3 under the Cahill standard, as adopted by our Order (#167), discovery  
4 of an anonymous online speaker's identity is only justified when the  
5 statement that speaker made is potentially actionable. See Quixtar,  
6 566 F. Supp. at 1216 (noting that discovery into the identity of an  
7 anonymous author is not warranted where the particular internet  
8 posting at issue is subject to a privilege or defense). The  
9 anonymous online speaker's First Amendment rights should not be  
10 impinged in order to provide a small piece of marginally relevant  
11 evidence in support a plaintiff's case regarding some other  
12 speaker's allegedly tortious speech.

13 Thus, discovery regarding the identity of the anonymous online  
14 speaker who posted the comments to the "IBO Rebellion" blog was  
15 properly denied. Quixtar's objection in this regard will be  
16 overruled.

17  
18 **IV. Objections to December 12, 2008, Minute Order (#295)**

19 Defendants have objected (#306) to the Magistrate Judge's  
20 December 12, 2008 Minute Order (#295). Among other things, this  
21 Minute Order addressed Defendants' Motion to Compel (#242).  
22 Defendants state that "at issue for purposes of the present  
23 objection" are two particular requests for production raised in the  
24 motion to compel, Request 29 and Request 42. (D.s' Objections 2  
25 (#306).)

26 In Defendants' reply brief (#256) in support of the Motion to  
27 Compel (#242), Defendants explicitly withdrew the motion to compel

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1 (#242) with respect to Requests 29 and 42. (D's Reply 2 (#256).)  
2 We would not normally consider objections to issues that were  
3 explicitly withdrawn from the Magistrate Judge's consideration.  
4 Nevertheless, though the motion to compel was seemingly  
5 withdrawn with regard to both Request 29 and Request 42, the  
6 Magistrate Judge heard argument in connection with Request 42  
7 regarding the production of documents from companies related to  
8 Quixtar. The Magistrate Judge ruled that "documents related to  
9 Alticor, Amway, or Access need not be provided." (Minute Order  
10 (#295).) The transcript of the hearing reveals that this ruling was  
11 made on relevance grounds. (Hearing Transcript, 7 (#292).) The  
12 Magistrate Judge stated "I don't think there's been any kind of  
13 showing made that any of their records have anything to do with this  
14 case or would lead to any discoverable information about this case.  
15 Quixtar's the party. These other companies are not the parties."  
16 (Id.)

17 We are satisfied that the Magistrate Judge's ruling was neither  
18 clearly erroneous nor contrary to law. See Local Rule IB 3-1; 28  
19 U.S.C. § 636(b)(1)(A). We see no abuse of discretion in the  
20 Magistrate Judge's decision to limit the required production of  
21 financial records to companies that are parties to this case. Thus,  
22 to the extent that Defendants' objections were not waived, they are  
23 overruled.

24

25 **V. Objections to Magistrate Judge's Order (#330)**

26 Like the November 12, 2008 Minute Order (#261) discussed above,  
27 the Magistrate Judge's Order (#330) addresses the issue of Mr.

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1 Dickie's deposition. As noted above, the Order (#330) covers some  
2 of the same ground as that Minute Order (#261), simply incorporating  
3 the provisions into a more complete and final form - the Order  
4 (#330) was issued while the objections (## 267, 269) to the Minute  
5 Order (#261) resolved here were still pending. The Order (#330) has  
6 also, however, provoked new objections, to which we now turn.

7 Mr. Dickie objects (#342) to Paragraph 2(A) of the Magistrate  
8 Judge's Order (#330), which requires Mr. Dickie to answer questions  
9 regarding "[w]ebsites, blogs, forums and videos which, in his  
10 capacity as a TEAM employee, Mr. Dickie created, administered, or  
11 sponsored." Mr. Dickie also objects to Paragraph 2(E), which  
12 requires him to testify regarding "[w]ebsites, blogs, forums and  
13 videos, which as an individual, Mr. Dickie created, administered,  
14 sponsored or on which he posted or provided content which suggested  
15 or encouraged Quixtar IBOs to leave Quixtar, to not renew as IBOs,  
16 to join a competitor of Quixtar, or otherwise disregard the Quixtar  
17 Rules of Conduct." Paragraph 2(E) specifies that "Mr. Dickie's  
18 answers shall include the content of such statements."

19 Defendants object (#343) to Paragraph 2(B) of the Magistrate  
20 Judge's Order (#330), which requires Mr. Dickie to answer questions  
21 regarding "[w]ebsites, blogs, forums and videos which, in their  
22 capacities as TEAM employees, other TEAM employees created,  
23 administered or sponsored." Defendants further object to Paragraph  
24 2(C), which requires Mr. Dickie to answer questions regarding  
25 "[w]ebsites, blogs, forums and videos which TEAM's management and  
26 leaders (founders of TEAM, Policy Council members, Round Table  
27  
28

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1 members, and other TEAM-identified 'leadership'), in their capacity  
2 as such, created, administered, sponsored or authorized."

3 Mr. Dickie and Defendants argue that these provisions of the  
4 Magistrate Judge's Order (#330) conflict with our previous Order  
5 (#167), advising the Magistrate Judge that Cahill, 884 A.2d at 451,  
6 "articulates the correct standard" for determining whether the  
7 identities of anonymous online speakers should be revealed.  
8 Quixtar, 566 F. Supp. at 1216. Mr. Dickie and Defendants both  
9 object that the Magistrate Judge's Order (#330) requires Mr. Dickie  
10 to testify on the matters described without first requiring that  
11 Quixtar make the prima facie showing described in Cahill.

12 Quixtar, on the other hand, argues that the Cahill standard is  
13 inapplicable with regard to these portions of the Magistrate Judge's  
14 Order (#330). According to Quixtar, Paragraphs 2(A)-(C) of the  
15 Magistrate Judge's Order (#330) do not trigger the Cahill inquiry  
16 because no testimony regarding the identity of anonymous online  
17 speakers is required. Further, Quixtar argues that these provisions  
18 of the Magistrate Judge's Order (#330) do not compel testimony  
19 regarding statements: thus, the Cahill inquiry into the  
20 actionability of statements identified by a plaintiff does not  
21 apply. Quixtar makes the same arguments regarding Paragraph 2(E),  
22 to the extent that provision addresses testimony about creating,  
23 administering, or sponsoring websites, blogs, forums, or videos.  
24 With regard to the portion of Paragraph 2(E) requiring Mr. Dickie to  
25 testify with regard to statements he posted "as an individual,"  
26 Quixtar claims that the Order only requires him to testify about

27

28

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1 actionable statements. Thus, on Quixtar's view, Doe v. Cahill is  
2 satisfied.<sup>6</sup>

3 A. Standard of Review

4 As noted above, "[a] district judge may reconsider any pretrial  
5 matter referred to a magistrate judge in a civil or criminal case  
6 pursuant to LR IB 1-3 where it has been shown that the magistrate  
7 judge's ruling is clearly erroneous or contrary to law." Local Rule  
8 IB 3-1; see 28 U.S.C. § 636(b)(1)(A). The "contrary to law"  
9 standard only applies to the Magistrate Judge's legal conclusions,  
10 which are reviewed de novo. See Osband, 290 F.3d at 1041.

11 B. Discussion

12 In our published Order (#167), we remarked that Mr. Dickie  
13 "clearly cannot refuse to answer if he had any involvement with the  
14 mere administration of a website without articulating why this  
15 administration implicates his First Amendment rights." Quixtar, 566  
16 F. Supp. 2d at 1215. Mr. Dickie has attempted to make such a  
17 showing: "creating or administering a website or blog is akin to  
18 publishing or distributing a statement, since the acts allow the  
19 message to reach an audience, and they deserve the same protection."  
20 (Objection 7 (#342).)

21 There is likely some minimal degree of association with a  
22 website that would not constitute speech. Quixtar's suggestion that  
23 the First Amendment does not apply to acts "such as contacting the  
24 Internet Service Provider that hosts the website or paying the ISP's

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25  
26 <sup>6</sup> Quixtar's arguments invoking the causation element of their  
27 tortious interference claims as a basis for ignoring the Cahill  
28 standard have been previously rejected (see supra at 24-25), and need  
not be further addressed here.

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1 monthly bill" could be correct. (P.'s Opp. 10 (#368).) The  
2 creation, administration, sponsorship, or authorization of a  
3 website, blog, forum or video would seem likely, however, to  
4 encompass rather more significant activity than the "mere  
5 administration" to which we previously referred. These activities  
6 very well might constitute speech, giving rise to First Amendment  
7 rights, as well as potential liability for defamation. See, e.g.,  
8 Oja v. U.S. Army Corps of Eng'rs, 440 F.3d 1122, 1130-31 (9th Cir.  
9 2006) (discussing analogy between internet publication and  
10 publication in traditional print media).

11 The Magistrate Judge has specified that nothing in the Order  
12 (#330) requires Mr. Dickie to testify as to the identity of any  
13 particular anonymous online speaker. (Hearing Tr., p. 26 (#307).)  
14 We are concerned, nonetheless, that the Magistrate Judge's written  
15 Order (#330) could in practice require such identification. For  
16 example, merely identifying a website as one which Mr. Dickie  
17 "created, administered or sponsored" could reveal Mr. Dickie's  
18 identity as an anonymous speaker, even if Mr. Dickie were not  
19 required to testify as to the authorship of any particular statement  
20 on that website. Similarly, identification of a website as one  
21 which was "created, administered, or sponsored" by a TEAM employee  
22 could reveal TEAM as an anonymous speaker (acting through its  
23 agent). We have noted that courts must balance the First Amendment  
24 rights of anonymous speakers with plaintiffs' needs for discovery  
25 that would destroy anonymity. Quixtar, 566 F. Supp. 2d at 1211. It  
26 does not appear that Paragraphs (A)-(C) and (E) of the Magistrate  
27 Judge's Order (#330) effectively achieve that balance.

28

1 We note that no objection has been raised to Paragraph 2(F) of  
2 the Magistrate Judge's Order (#330). This provision requires that  
3 Mr. Dickie identify "[w]ebsites, blogs, forums and videos, known to  
4 Mr. Dickie, containing statements that reference or relate to  
5 Quixtar or Alticor." The Magistrate Judge then elaborates that "at  
6 this stage, Mr. Dickie's answers shall include the content of such  
7 statements but not the identity of the speaker." It would seem that  
8 any website, blog, forum or video that would fall under Paragraphs  
9 2(A)-(C) and (E) of the Magistrate Judge's Order (#330) - at least  
10 those that would be relevant to Quixtar's claims for tortious  
11 interference - would also fall under Paragraph 2(F). The procedure  
12 for discovery under Paragraph 2(F), however, appears to provide for  
13 application of the Cahill analysis before destroying the anonymity  
14 of any anonymous speakers.

15 Of course, our concern about the First Amendment rights of  
16 anonymous speakers does not relate to any websites, blogs, forums,  
17 or videos that Mr. Dickie or TEAM employees or management created,  
18 administered or sponsored non-anonymously. To the extent that any  
19 websites, blogs, forums, or videos may fall under Paragraphs 2(A)-  
20 (C) and (E), but do not involve anonymous speech by Mr. Dickie or  
21 TEAM, no First Amendment concerns are raised by the requirement that  
22 Mr. Dickie answer questions regarding them.

23 We conclude, therefore, that Mr. Dickie shall answer, pursuant  
24 to Paragraphs 2(A)-(C) and (E) of the Magistrate Judge's Order  
25 (#330), questions regarding the non-anonymous creation,  
26 administration, or sponsorship of websites, blogs, forums and videos  
27 by Mr. Dickie or other TEAM employees, as well as the creation,  
28

1 administration, sponsorship, or authorization of such things by  
2 TEAM's management and leaders. With regard to websites, blogs,  
3 forums and videos that were created, administered, sponsored, or  
4 authorized anonymously, and which would otherwise fall under  
5 Paragraphs 2(A)-(C) or (E), Mr. Dickie shall identify them as being  
6 known to him, pursuant to Paragraph 2(F), so that the Cahill  
7 analysis may be performed.

8

9

#### VI. Conclusion

10 Under Nevada law, after a business entity merges into another,  
11 the constituent entity cannot later sue or be sued because the  
12 separate existence of every entity except the surviving entity  
13 ceases. All liabilities of the constituent entity, however, survive  
14 the merger and are the responsibility of the surviving entity.

15 Further, the Magistrate Judge's rulings regarding the Hooded  
16 Angry Man video, the "Save Us Dick DeVos" blog, the "Integrity is  
17 TEAM" blog, and the "IBO Rebellion" blog were neither clearly  
18 erroneous nor contrary to law. We disagree with the Magistrate  
19 Judge's determination regarding the statement at issue from the  
20 "Q'Reilly" blog: that statement can, in the totality of the  
21 circumstances, reasonably be considered an implied assertion of fact  
22 and is thus potentially defamatory. Under the Cahill standard,  
23 Quixtar is therefore entitled to discover the identity of the  
24 anonymous online speaker who posted it.

25 Also, the Magistrate Judge was within his discretion to limit  
26 the required production of financial records to companies that are

27

28

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1 parties to this case. His Minute Order (#295) to that effect was  
2 neither clearly erroneous nor contrary to law.

3 Finally, we find the objections of Mr. Dickie and Defendants  
4 with regard to the Magistrate Judge's Order (#330) to be well taken.  
5 The Order, as written, raises concerns regarding the First Amendment  
6 rights of anonymous speakers. These concerns may be ameliorated  
7 through application of the Cahill standard, pursuant to the  
8 procedure contemplated by Paragraph 2(F) of the Magistrate Judge's  
9 Order (#330).

10

11 IT IS, THEREFORE, HEREBY ORDERED that the "Five Constituent  
12 Defendants' Motion to Dismiss and for Summary Judgment" (#231) is  
13 GRANTED on the following basis: the five constituent defendants are  
14 entitled to dismissal pursuant to Fed. R. Civ. P. 12(b)(6) because  
15 those parties lack the capacity to be sued under Nevada law. All  
16 causes of action asserted against those five parties in the first  
17 amended complaint, however, remain a part of this case. These  
18 claims will be treated as asserted against Defendant Sky Scope Team,  
19 Inc., which as the surviving entity acquired all liabilities of the  
20 constituent defendants upon merger.

21

22 IT IS FURTHER ORDERED that the "Anonymous Online Speakers'  
23 Objection to Magistrate Judge's Ruling" (#267), regarding the "Save  
24 Us Dick DeVos" blog and the Hooded Angry Man video, is OVERRULED.  
25 Thus, the Magistrate Judge's ruling that Mr. Dickie shall testify  
26 with regard to the identity of these two anonymous online speakers  
27 is affirmed.

28



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1        IT IS FURTHER ORDERED that "Plaintiff Quixtar Inc.'s Objections  
2 to Magistrate Judge's November 12, 2008 Minute Order" (#269) are  
3 SUSTAINED IN PART and OVERRULED IN PART as follows: the Magistrate  
4 Judge's rulings regarding the "Integrity is TEAM" blog and the "IBO  
5 Rebellion" blog are hereby affirmed; we reverse the Magistrate  
6 Judge's ruling with regard to the "Q'Reilly" blog. Mr. Dickie  
7 therefore shall testify as to the identity of the author of the  
8 statement from "Q'Reilly" blog, but need not testify regarding the  
9 identity of the anonymous online speakers from the "Integrity is  
10 TEAM" blog or the "IBO Rebellion" blog.

11  
12        IT IS FURTHER ORDERED that our rulings here on the objections  
13 (## 267, 269) to the Magistrate Judge's Minute Order (#261) shall  
14 apply equally to Paragraph 2(D), 3 and 4 of the Magistrate Judge's  
15 later Order (#330). Thus, Mr. Dickie shall be required to testify  
16 with regard to the identity of the anonymous speaker from the "Save  
17 Us Dick DeVos" blog, the Hooded Angry Man video, and the "Q'Reilly  
18 blog," but not the "Integrity is TEAM" blog or the "IBO Rebellion"  
19 blog.

20  
21        IT IS FURTHER ORDERED that Defendants' Objection (#306) to the  
22 Magistrate Judge's December 12, 2008 Minute Order (#295) is  
23 OVERRULED. The Magistrate Judge's ruling regarding what documents  
24 must be produced is thus affirmed.

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1 IT IS FURTHER ORDERED that the objections (## 342, 343) to the  
2 Magistrate Judge's Order (#330) are SUSTAINED IN PART and OVERRULED  
3 IN PART on the following basis:

4 Mr. Dickie shall answer, pursuant to Paragraphs 2(A)-(C) and  
5 (E) of the Magistrate Judge's Order (#330), questions regarding the  
6 non-anonymous creation, administration, or sponsorship of websites,  
7 blogs, forums, and videos by Mr. Dickie or other TEAM employees, as  
8 well as the creation, administration, sponsorship, or authorization  
9 of websites, blogs, forums, and videos by TEAM's management and  
10 leaders.

11 With regard to websites, blogs, forums, and videos that were  
12 created, administered, sponsored, or authorized anonymously, and  
13 which would otherwise fall under Paragraphs 2(A)-(C) or (E), Mr.  
14 Dickie shall identify them as being known to him, pursuant to  
15 Paragraph 2(F), so that the Cahill standard may be applied as  
16 appropriate.

17  
18  
19 DATED: April 7, 2009.

20   
21 UNITED STATES DISTRICT JUDGE  
22  
23  
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27  
28

Exhibit 6

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21 Attorneys for Plaintiff QUIXTAR INC.

22  
23 UNITED STATES DISTRICT COURT  
24 DISTRICT OF NEVADA

25 QUIXTAR INC.,

26 Plaintiff,

27 v.

28 SIGNATURE MANAGEMENT TEAM, LLC  
d/b/a TEAM,

Defendant.

CASE NO.

COMPLAINT

For its Complaint against defendant Signature Management Team, LLC doing business as "TEAM," Plaintiff Quixtar Inc. ("Quixtar") states as follows:

**INTRODUCTION**

1. In August 2007, TEAM and its principals set in motion a carefully orchestrated, multi-pronged plan to form a new multi-level marketing company to compete against Quixtar. The central element of TEAM's strategy was a massive and unprecedented raid on one of

1 Quixtar's most valuable assets – its confidential, proprietary, trade secret Line of Sponsorship  
2 (“LOS”) information – to solicit Quixtar distributors to resign from Quixtar and join TEAM's  
3 new competing multilevel marketing business.

4 2. TEAM has instructed or encouraged thousands of individuals to terminate their  
5 Quixtar contracts and resign from Quixtar, resulting in many millions of dollars in lost sales of  
6 Quixtar products and lost distribution channels. TEAM's principals and leaders have blatantly  
7 violated critical non-compete and non-solicitation agreements, tortiously interfered with  
8 Quixtar's relationships with its distributors, and unfairly used Quixtar's registered trademarks.  
9 TEAM has initiated and driven frivolous litigation against Quixtar in at least 17 different court  
10 cases around the country, and has disparaged Quixtar in a vicious smear campaign.

#### 11 PARTIES AND JURISDICTION

12 3. Plaintiff Quixtar is a Virginia corporation whose address and principal place of  
13 business is 5101 Spaulding Plaza, Ada, MI 49355. Quixtar, which began operations September  
14 1, 1999, is a successor in interest to Amway Corporation (“Amway”) with regard to certain  
15 assets of Amway in North America, including distributorship agreements previously made with  
16 Amway.

17 4. Defendant Signature Management Team, LLC (“TEAM”) is a Nevada limited  
18 liability company, with its principal place of business in the State of Michigan. According to  
19 sworn testimony by TEAM's CEO and sole member, TEAM is owned by six corporations  
20 registered in Nevada.

21 5. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121, 28 U.S.C.  
22 § 1331, and 28 U.S.C. § 1367.

23 6. Venue is properly laid in this court pursuant to 28 U.S.C. § 1391.

#### 24 GENERAL ALLEGATIONS

##### 25 RELATIONSHIP BETWEEN TEAM AND WOODWARD/BRADY

26 7. TEAM was established, and has at all relevant times been run and operated, by  
27 Orrin Woodward (“Woodward”) and Chris Brady (“Brady”), two former Independent Business  
28 Operators (“IBOs”) of Quixtar. TEAM produces, markets, and sells Business Support Materials

1 ("BSM"), such as books, CDs, rallies, meetings, educational seminars, and other services, to  
2 train and motivate Quixtar IBOs.

3 8. TEAM markets BSM and otherwise conducts business under the direction of  
4 Woodward, Brady, and individuals acting on their behalf. For example, TEAM communicates  
5 with individuals affiliated with TEAM largely through its website, [www.the-team.biz](http://www.the-team.biz). That  
6 website is registered to Woodward personally.

### 7 **PROCEDURAL BACKGROUND**

8 9. On September 4, 2007, TEAM commenced an action against Quixtar in the  
9 District Court of Collin County, Texas, 380th Judicial District. The named plaintiff in the Collin  
10 County litigation was Signature Management Team, LLC. TEAM alleged that Quixtar had  
11 tortiously interfered with TEAM's prospective business relations, had disparaged the business of  
12 TEAM, and had engaged in acts of unfair competition.

13 10. Quixtar moved to dismiss the Collin County case on grounds of forum non  
14 conveniens. On October 2, 2007, after nearly a full day of hearing argument and receiving  
15 testimony and documentary evidence, the Collin County court granted Quixtar's motion for  
16 dismissal based on forum non conveniens. Quixtar now brings this action for damages,  
17 declaratory judgment, and injunctive relief.

### 18 **QUIXTAR BUSINESS MODEL**

19 11. Quixtar offers throughout North America a unique business opportunity  
20 combining the efficiency of the Worldwide Web with personal contact. Quixtar has operated a  
21 multilevel marketing Sales and Marketing Plan in North America since September 1, 1999.  
22 Previously, Amway operated a multilevel marketing Sales and Marketing Plan in North America  
23 beginning in 1959.

24 12. Amway continues to operate direct selling plans in more than eighty foreign  
25 countries outside North America. Quixtar is currently the largest online seller of health and  
26 beauty products and the largest online retailer among all e-commerce sites. Amway and Quixtar  
27 together generate worldwide sales of about \$6 billion each year.  
28

1 13. Quixtar attributes its success not only to its outstanding lines of consumer  
2 products but also to its unique network of Independent Business Owners, or IBOs. (As used in  
3 this Complaint, "distributor" and "IBO" are synonymous. "Distributorship" means the  
4 Independent Business operated by a distributor or IBO under contract with Amway or Quixtar.)  
5 IBOs are independent contractors who earn "bonus" commissions under Quixtar's multilevel  
6 Sales and Marketing Plan for generating sales of Quixtar products. In addition to selling  
7 products and services to customers and purchasing products and services for their own use, an  
8 IBO may sponsor other IBOs by introducing them to the Sales and Marketing Plan and providing  
9 them with information about the Quixtar business.

#### 10 QUIXTAR'S PROPRIETARY "LOS" INFORMATION

11 14. This lineage or linkage between IBOs is referred to as the "line or sponsorship,"  
12 or "LOS." The LOS is one of Quixtar's most valuable assets. It includes not only a list of  
13 Quixtar customers, but also the architecture and structure of the organization of Quixtar's  
14 independent sales force, its sales commission structure and its key customers. The LOS is the  
15 exclusive channel through which Quixtar products are marketed. The LOS encompasses the  
16 organization of Quixtar's sales force, its sales commission structure and its key customers. The  
17 goodwill and relationships Quixtar has with customers and/or IBOs, all based on and organized  
18 around the LOS, are extremely valuable to Quixtar. The architecture and structure of the Quixtar  
19 LOS is unique and proprietary, and constitutes Quixtar's confidential trade secret information.

20 15. This information is not publicly available. Quixtar takes substantial measures to  
21 protect the confidentiality of this proprietary and competitively valuable distribution network  
22 architecture. The Quixtar LOS information is protected by, among other things, Rule 4.27 of the  
23 Quixtar Rules of Conduct, which are more fully discussed below.

24 16. The confidential distributor network information is extremely valuable and  
25 constitutes a substantial portion of the value of Quixtar's business. The network and its specific  
26 architecture of relationships set Quixtar apart from less successful multilevel marketing  
27 organizations and provide a substantial competitive advantage.  
28

1 17. It would be practically impossible for a competitor to reconstruct or duplicate the  
2 confidential information about Quixtar's distributor network without access to that confidential  
3 information.

4 18. Quixtar, and its predecessor, Amway, have spent nearly 50 years developing their  
5 unique and confidential distribution network. Disclosure of the architecture and structure of this  
6 confidential distribution network (i.e., the LOS) to a competitor would cause serious and  
7 irreparable harm to Quixtar's business and give any such competitor an unfair competitive  
8 advantage.

#### 9 QUIXTAR'S RULES OF CONDUCT

10 19. To become an IBO, an individual must submit a written Application to Quixtar.  
11 By executing the Application, each IBO agrees to comply with the Sales and Marketing Plan and  
12 Rules of Conduct as they may be amended and published from time to time in official literature.

13 20. Each IBO is required to renew his or her contract with Quixtar each and every  
14 year, pay a renewal fee, and renew the commitment to abide by the Quixtar Sales and Marketing  
15 Plan and Rules of Conduct as they may be amended and published from time to time in official  
16 Quixtar literature.

17 21. Rule 4.14 prohibits IBOs from "tak[ing] advantage of their knowledge of or  
18 association with other IBOs whom they did not personally register, including their knowledge  
19 resulting from or relating to their individual lines of sponsorship," in order to promote and  
20 expand other business ventures, including other selling activities involving products, services, or  
21 business opportunities not offered or marketed by Quixtar.

22 22. Rule 4.14.1 prohibits IBOs from soliciting, directly or indirectly, other IBOs  
23 whom they (i.e., the first-referenced IBOs) did not personally register in order to sell, offer to  
24 sell, or promote other product, services, or business opportunities not offered or marketed by  
25 Quixtar.

26 23. Rule 4.27 provides that all LOS information is considered and maintained as  
27 Proprietary Information of Quixtar, and that all IBOs, among other things, shall not disclose  
28 such Proprietary Information to any third party or use such Proprietary Information to compete



1 either directly or indirectly with Quixtar. Rule 4.27 provides that any such use or disclosure of  
2 Proprietary Information will cause significant and irreparable harm to Quixtar, warranting an  
3 award of injunctive relief, including temporary and preliminary injunctive relief.

4 24. Rule 4.8 requires IBOs to comply with all applicable laws, regulations and codes,  
5 and to refrain from activities that could injure the reputation of the distributor or Quixtar.

6 25. Rule 6.5 prohibits IBOs from using the LOS to sell, distribute, or promote  
7 competing products, services or other business ventures, or otherwise interfere in the business of  
8 Quixtar or other IBOs.

9 26. Rule 6.5.3 prohibits IBOs from competing, either directly or indirectly, with  
10 Quixtar while registered as a Quixtar IBO.

11 27. Rules 6.5.4 prohibits IBOs from competing, either directly or indirectly, with the  
12 business of Quixtar in the United States, Canada, and all offshore markets operating under the  
13 North American Independent Business Ownership Plan during the six-month period following  
14 the voluntary or involuntary resignation, non-renewal, or termination of their distributorship.

15 28. Rule 6.5.5 prohibits IBOs from encouraging, soliciting or otherwise attempting to  
16 recruit or persuade any other IBO to compete with the business of Quixtar for a period of two  
17 calendar years following the termination of their registration as a Quixtar IBO.

18 29. Under Rule 6.5.10, IBOs acknowledge that a violation of any subsection of Rule  
19 6.5 will cause significant and irreparable harm to active IBOs and Quixtar, warranting an award  
20 of injunctive relief, including a temporary restraining order and/or a preliminary injunction,  
21 specific performance, and damages including costs, attorneys' fees, and disgorgement of all  
22 profits made as a result of such unauthorized activity.

23 30. The non-competition provisions contained in Rule 6.5 are reasonably limited in  
24 duration and scope, and serve to protect Quixtar's reasonable competitive business interests in  
25 protecting its goodwill and relationships with its IBOs and other customers, and protecting its  
26 interests in its confidential, proprietary and trade secret information.

**TEAM AND ITS MISCONDUCT**

31. TEAM was established, and has at all relevant times been run and operated, by Orrin Woodward and Chris Brady, or persons operating under their direction. Woodward and Brady were terminated as Quixtar Independent Business Owners ("IBOs") on August 9, 2007.

32. TEAM produces, markets, and sells Business Support Materials ("BSM"), such as books, CDs, rallies, meetings, educational seminars, and other services to train and motivate Quixtar IBOs. Until recently, TEAM sold BSM exclusively to Quixtar IBOs; but in recent weeks thousands of IBOs have resigned in response to TEAM's wrongful solicitation and therefore, on information and belief, TEAM today sells BSM both to current Quixtar IBOs and to former Quixtar IBOs.

33. TEAM derives most, if not all, of its revenue from selling BSM to Quixtar IBOs. TEAM recently stated in another court filing that:

QUIXTAR owns its own training system and sells training materials to QUIXTAR IBOs which compete with the training, leadership and motivational materials sold to QUIXTAR IBOs by TEAM. QUIXTAR is, in that regard, a competitor of TEAM, QUIXTAR permits other successful IBOs to develop and sell training materials to its IBOs – including IBOs which are affiliated with TEAM. The training systems developed by other IBOs which are not affiliated with TEAM are competitors of TEAM.

34. TEAM markets BSM and otherwise conducts business under the direction of Woodward, Brady, and individuals acting at their direction. TEAM's operations are inextricably intertwined with those of Woodward, Brady, and other individuals authorized by TEAM.

35. Prior to their termination, Woodward and Brady qualified as Diamond IBOs, a high level of achievement within the Quixtar business. As Diamond IBOs, Quixtar granted Woodward and Brady a limited, revocable license to use Quixtar's confidential, trade secret, and proprietary information, including LOS information, in accordance with Quixtar's Rules of Conduct.

36. Woodward and Brady have conveyed to TEAM substantial portions of Quixtar's confidential, proprietary and competitively valuable LOS information. TEAM has used this

1 confidential information without Quixtar's authorization to recruit and solicit Quixtar IBOs to  
2 align with TEAM and/or to resign from Quixtar, and for other purposes detrimental to Quixtar.

3 37. TEAM's unauthorized use of Quixtar's confidential, proprietary and  
4 competitively valuable information has caused and will continue to cause serious and irreparable  
5 harm to Quixtar's business. TEAM's unauthorized use of Quixtar's confidential information  
6 gives TEAM an unfair competitive advantage in the multilevel marketing industry.

7 **TEAM's Early Efforts to Break Off from Quixtar and Start a Competing Company**

8 38. On information and belief, TEAM started planning to launch a new competing  
9 multi-level marketing company at least as early as the first half of 2007, and, at the same time, to  
10 stop promoting and supporting the Quixtar business.

11 39. TEAM has used the Quixtar LOS to recruit a large organization of Quixtar IBOs  
12 as customers for TEAM products and services. TEAM induced each of these recruits to execute  
13 a Quixtar IBO contract while concealing or minimizing the fact that the recruit would actually  
14 become a Quixtar IBO. TEAM falsely represented to each of these newly recruited Quixtar  
15 IBOs that they were in fact joining a business operated by TEAM, and referred to Quixtar, if at  
16 all, as a mere supplier to TEAM.

17 40. TEAM required its customers to use their unique Quixtar IBO registration number  
18 as a password for entering TEAM controlled web sites and meetings, or as a prerequisite for  
19 obtaining a TEAM number for access to those websites and meetings. Recently, TEAM  
20 assigned new TEAM numbers to all TEAM-affiliated Quixtar IBOs in anticipation of a mass  
21 exodus from Quixtar, solicited and orchestrated by TEAM.

22 41. TEAM's business has been derivative of and dependent upon the Quixtar  
23 business, as virtually all, if not all, of its revenue has been derived from selling BSM to Quixtar  
24 IBOs through the Quixtar LOS. TEAM used the Quixtar LOS to sell TEAM products and  
25 services to Quixtar IBOs, but discouraged those same IBOs from acting as effective distributors  
26 for Quixtar products. TEAM has continued to free ride on Quixtar's products and LOS  
27 distribution channel, while systematically alienating Quixtar IBOs from Quixtar by persuading  
28 many of them to believe that they were TEAM customers rather than Quixtar IBOs. This

1 deceptive practice laid the groundwork for TEAM eventually to try to hijack a substantial  
2 segment of Quixtar's LOS as a multilevel distribution channel for products supplied by TEAM  
3 instead of Quixtar.

4 42. On information and belief, TEAM has negotiated with at least one new supplier as  
5 a source of products for TEAM's new multi-level marketing company.

6 **TEAM's Threats Against Quixtar—The August 9, 2007 Meeting**

7 43. Earlier this year, Quixtar requested a meeting to address violations of Quixtar's  
8 Rules of Conduct by Woodward, Brady and their TEAM organization.

9 44. On August 9, 2007, representatives of Quixtar, including Michael A. Mohr, Vice  
10 President and General Counsel of Alticor Inc. (Quixtar's parent), attended a meeting in Ada,  
11 with Woodward, Brady, TEAM's CEO (Robert Dickie III), TEAM's lawyer (Kevin Thompson)  
12 and other IBOs acting in concert with TEAM. Although Quixtar intended to provide Woodward,  
13 Brady and their TEAM organization with (i) notice of their numerous defaults under their  
14 Quixtar contract, (ii) the bases for Quixtar's conclusion that they were in default, and (iii) a  
15 remediation plan to cure their defaults, Woodward, Brady and the other TEAM representatives  
16 demanded their release from their Quixtar contracts so they could leave and compete with  
17 Quixtar.

18 45. TEAM immediately proposed that Quixtar waive a number of important contract  
19 provisions that protect Quixtar's LOS and prevent raiding of its IBOs by competitive multi-level  
20 marketing companies. The TEAM representatives asked Quixtar to agree, contrary to their  
21 contracts with Quixtar, that Woodward, Brady and other TEAM leaders be permitted to take the  
22 thousands of Quixtar IBOs under them in the LOS to a competing business opportunity.  
23 Knowing that their plan would violate the non-compete rule in their Quixtar contracts, they  
24 asked that Quixtar repeal that rule for them. The obvious reason for requesting a repeal of the  
25 non-compete rule was to allow TEAM to compete with Quixtar, and to transform a network of  
26 distributors recruited using Quixtar's LOS into a competing multi-level marketing business.

27 46. Quixtar tried to direct the meeting back to its original purpose – to discuss a cure  
28 of the numerous, serious breaches of the Quixtar Rules of Conduct in the TEAM organization.

1 The TEAM founders, Woodward and Brady, however, refused to discuss that matter. Quixtar  
2 then terminated them as IBOs.

3 47. The TEAM leaders then had one of their lawyers, D.J. Poyfair, deliver a copy of a  
4 draft class action complaint that would be filed in California by close of business that same day  
5 if Quixtar did not accede to his clients' demands. TEAM also threatened Quixtar with regulatory  
6 action and negative publicity if Quixtar did not give them a roll back of Quixtar's non-compete  
7 Rule. Quixtar would not accede to TEAM's request, so TEAM had a number of its leaders and  
8 followers file the class action complaint in California that same day, August 9, 2007, as  
9 threatened.

10 48. The California complaint includes scandalous, meritless allegations to the effect  
11 that Quixtar products are too expensive and that Quixtar therefore operates as an illegal pyramid.  
12 It is clear from the complaint that the TEAM conspirators did not come to the August 9 meeting  
13 to discuss in good faith remediation of their breaches of the Quixtar contracts. They came in bad  
14 faith to attempt to blackmail Quixtar into waiving its contractual rights. It also is clear from the  
15 California complaint that the TEAM conspirators also breached additional confidentiality  
16 agreements with Quixtar and the IBOAI.

17 49. On its face, the California complaint also wrongfully discloses certain  
18 confidential, commercially sensitive information that had been disclosed to some of the named  
19 plaintiffs in their capacity as IBO leaders, subject to written confidentiality agreements with  
20 Quixtar and the IBOAI.

21 50. On October 5, 2007, less than two months after it was filed, a federal district  
22 judge in California dismissed the class action complaint with prejudice.

### 23 **Unlawful TEAM Activity**

24 51. TEAM and its agents have engaged in a concerted, systematic, nation-wide effort  
25 to unfairly compete with Quixtar, misappropriate Quixtar's trade secrets, disparage Quixtar and  
26 interfere with Quixtar's contracts with thousands of Quixtar IBOs and disrupt Quixtar's business.

27  
28

1 52. TEAM and its agents have continued to use Quixtar's proprietary LOS to compete  
2 unlawfully with and interfere with the business of Quixtar and its IBOs and to solicit IBOs to  
3 compete with Quixtar's business in breach of their Quixtar contracts.

4 53. For example, TEAM and its agents continue to hold TEAM meetings around the  
5 country on Tuesday and Saturday nights. TEAM publicizes and generates attendance at these  
6 meetings through the use of Quixtar's LOS information. At a number of these TEAM meetings,  
7 attendees were required to provide a Quixtar IBO number to gain admittance. The times and  
8 locations of these meetings have been posted on TEAM's website, which until recently has only  
9 been accessible with a Quixtar IBO number or with a TEAM password obtained with a Quixtar  
10 IBO number.

11 54. TEAM used Quixtar LOS information to heavily promote a "major function" in  
12 Louisville, Kentucky scheduled for the weekend of October 19, 2007. TEAM has announced  
13 that this "Fall Leadership Conference" would be the public launch of the restructured TEAM  
14 multilevel marketing business. TEAM promised that Louisville is where Woodward and Brady  
15 will "roll out" their "flurry of new activity and materials" and that the Louisville meeting would  
16 be "the most important major convention the TEAM has ever had and one that you will not want  
17 to miss."

18 55. TEAM's continuing efforts to hold meetings for existing and prospective Quixtar  
19 IBOs is not to promote and support the Quixtar business, but to further TEAM's own self-  
20 interests which are detrimental to Quixtar.

21 56. Not only is TEAM using its meetings to lay the groundwork for future  
22 competition against Quixtar, but TEAM engages in such competition with Quixtar and its IBOs  
23 every time it holds a meeting. TEAM has admitted that it is a direct competitor of both Quixtar  
24 and its authorized IBOs in the market for BSMs. Every TEAM meeting takes away potential  
25 customers for Quixtar and its legitimate IBOs who sell approved BSMs. TEAM continues to  
26 gather together large groups of current and potential Quixtar IBOs for the primary purpose of  
27 selling them TEAM BSMs and maintaining their primary allegiance to TEAM to the detriment  
28 of Quixtar.

1 57. As another example, TEAM and its agents have sent emails to Quixtar IBOs  
2 informing them that TEAM soon will be "free" from Quixtar, but that TEAM loyalists should  
3 continue to recruit and sign up new Quixtar IBOs in the meantime so that they can transfer these  
4 new recruits over to the new, competing TEAM business.

5 58. As yet another example, TEAM, its agents and representatives continue to  
6 broadcast mass voice messages to IBOs disparaging Quixtar, discouraging them from building  
7 their Quixtar businesses, and encouraging them to resign from Quixtar. In particular, high level  
8 TEAM representatives sent voicemails between August 30, 2007 and September 6, 2007 to the  
9 IBOs under them in the LOS:

- 10 • encouraging Quixtar IBOs to build the competing TEAM business, but  
11 discouraging those same Quixtar IBOs from participating in or building their  
Quixtar business;
- 12 • disparaging and diminishing the reputation of Quixtar by stating that (1) Quixtar  
13 is "in freefall," (2) "partner stores are dropping" Quixtar and (3) "the credit card  
company that's financing their credit card is also dropping them;"
- 14 • calling Quixtar's pricing "horrible" and stating that "people cannot sell" Quixtar  
15 products; and
- 16 • comparing Quixtar to the communist East German regime and its IBOs to "rats  
leaping off a ship."

17 59. TEAM's and its agents' continued use of Quixtar's LOS information to identify  
18 and target Quixtar's IBOs in order to induce them to do business with TEAM's competing MLM  
19 has caused and is continuing to cause substantial and material harm to Quixtar and its  
20 distribution network of IBOs.

21 60. TEAM has indicated that it will solicit other IBOs as well as their non-IBO  
22 customers to switch from Quixtar to their competing businesses. Even more damaging, TEAM  
23 promises to solicit other IBOs to spend their time and effort selling competing products instead  
24 of Quixtar products. The damage to Quixtar's business due to lost product sales, while difficult  
25 to measure in dollar terms with certainty, has been and will continue to be substantial.

26 61. TEAM and its agents are also undermining the integrity of the Quixtar LOS itself.  
27 By soliciting IBOs to switch their sponsoring efforts from Quixtar to a competitor, TEAM is  
28 depriving Quixtar not only of future sales but of the current and future Quixtar sales force.



1 Quixtar competes with other multi-level marketing companies not only with respect to the sale of  
2 its products, but also in attracting and retaining its IBO distributors. Losses of IBOs to a  
3 competitor adversely affect Quixtar as well as all the IBOs who are working hard to build and  
4 maintain a Quixtar business. Each IBO may be entitled to receive bonuses based on sales  
5 generated by his or her downline IBOs. Thus, anything that disrupts or interferes with the  
6 productivity of an IBO's downline distributors, including disparagement of Quixtar and wrongful  
7 solicitation of its IBO sales force, adversely impacts and depreciates the earning ability of the  
8 upline IBO.

9 62. As part of their calculated plan to interfere with and compete unfairly with  
10 Quixtar's business, TEAM and its agents have encouraged thousands of Quixtar IBOs to resign  
11 from Quixtar or to remove themselves from Quixtar's auto renewal plan. These actions are  
12 calculated to reduce the number of IBOs in the Quixtar organization, and ultimately place former  
13 Quixtar IBOs into TEAM's competing venture. In the past few weeks, thousands of Quixtar  
14 IBOs have resigned in a manner that has been coordinated and directed by TEAM and its agents.

15 63. At its TEAM meetings, TEAM hides the Quixtar business opportunity so that it  
16 can instead exploit TEAM BSM. In particular, TEAM misrepresents to those attending its  
17 meetings that those who join Quixtar as IBOs are instead joining TEAM, and that Quixtar is  
18 merely a vendor, supplier or subcontractor of TEAM. TEAM thus intentionally creates  
19 confusion amongst actual and prospective Quixtar IBOs.

20 64. It is difficult to know how many new Quixtar IBOs will not be sponsored because  
21 of TEAM's interference, but Quixtar as well as its IBOs are harmed and will continue to be  
22 harmed by the loss of the selling and sponsoring efforts of IBOs who have resigned or ceased to  
23 distribute Quixtar's products due to TEAM's improper actions. The damage to Quixtar's  
24 business due to lost IBO recruitment will be substantial.

25 65. TEAM has promoted Quixtar's XS line of products, including energy drinks and  
26 meal supplement bars, through TEAM websites and meetings, in a manner that is likely to cause  
27 confusion as to the source of the products, for example, by suggesting that the origin of Quixtar's  
28 XS line of products is TEAM, not Quixtar. Quixtar's XS Energy drink has been featured



1 prominently on TEAM's U.S. website and TEAM's Spanish website. Likewise, TEAM  
2 advocates that each TEAM member eat one XS bar and drink two cans of XS Energy drink per  
3 day. Because TEAM conceals Quixtar as the exclusive source of these products, TEAM has  
4 created the false impression that the origin of Quixtar's XS line of products is TEAM, not  
5 Quixtar.

6 **COUNT 1**

7 **VIOLATION OF THE LANHAM ACT**

8 66. Quixtar realleges and incorporates paragraphs 1-65 as if fully set forth herein.

9 67. TEAM and its agents have made false and/or misleading statements about the  
10 pricing of Quixtar products. These actions constitute false or misleading representations of fact  
11 in violation of §1125 of the Lanham Act.

12 68. TEAM and its agents have also, by its representations and omissions at its  
13 meetings, created the false impression among those attending its meetings that those who join  
14 Quixtar as IBOs are instead joining TEAM, and that Quixtar is merely a vendor, supplier or  
15 subcontractor of TEAM.

16 69. Additionally, TEAM and its agents have promoted Quixtar's XS line of products,  
17 including energy drinks and meal supplement bars, through TEAM websites and meetings, in a  
18 manner that is likely to cause confusion as to the source of the products, for example, by  
19 suggesting that the origin of the XS line of products is TEAM, not Quixtar.

20 70. By reason of such representations and omissions, TEAM and its agents have, in  
21 connection with its goods, services and commercial activities, used in commerce false or  
22 misleading descriptions of fact, or false or misleading representations of fact, which in  
23 commercial advertising or promotion, misrepresent the nature, characteristics, or qualities of  
24 TEAM's and/or Quixtar's goods, services, and/or commercial activities.

25 71. Quixtar has been damaged by such actions of Defendants, and is likely to suffer  
26 further injury if Defendants are not enjoined from their illegal acts.

27  
28

**COUNT 2**

**TRADE SECRET MISAPPROPRIATION**

72. Quixtar realleges and incorporates paragraphs 1-71 as if fully set forth herein.

73. Quixtar's confidential LOS distributor network information is extremely valuable, and constitutes a substantial portion of the value of Quixtar's business. The network and its specific architecture provide a substantial competitive advantage.

74. A number of TEAM-affiliated Quixtar IBOs, including Woodward and Brady, achieved levels within the Quixtar organization that allowed them confidential access to Quixtar's confidential LOS information to build and support their business in accordance with the Quixtar Rules of Conduct. With the use of Quixtar's LOS information, TEAM exerts substantial influence over and creates valuable relationships with Quixtar IBOs.

75. Woodward, Brady and other TEAM-affiliated Quixtar IBOs with access to Quixtar's confidential LOS information knew that they had an express obligation to maintain its secrecy and to use LOS information only for the promotion of the Quixtar business in accordance with the Quixtar Rules of Conduct.

76. Quixtar has since revoked authorization for TEAM and its agents, including Woodward and Brady, to use Quixtar confidential LOS information. TEAM and its agents, however, continue to use it without Quixtar's consent. In particular, TEAM continues to carry out at least the following unauthorized acts:

(a) using Quixtar's confidential LOS to organize and hold TEAM meetings and functions, including TEAM's Fall Leadership Conference in Louisville, Kentucky;

(b) using Quixtar's confidential LOS through Quixtar's website to transmit emails to TEAM-affiliated Quixtar IBOs for the benefit of TEAM and to disparage Quixtar; and

(c) using Quixtar's confidential LOS to send mass voice mail messages to TEAM-affiliated Quixtar IBOs for the benefit of TEAM and to disparage Quixtar.

77. Furthermore, TEAM's use of Quixtar's confidential LOS information is not only unauthorized and unlawful in and of itself, but TEAM is using Quixtar's confidential LOS

1 information for unlawful purposes, including unfairly competing with Quixtar and its IBOs,  
2 soliciting IBOs, disparaging Quixtar, and violating Quixtar's Rules of Conduct.

3 78. Quixtar has been damaged by such actions of Defendants, and is likely to suffer  
4 further injury if Defendants are not enjoined from their illegal acts.

5 **COUNT 3**

6 **TORTIOUS INTERFERENCE WITH EXISTING CONTRACTS**

7 79. Quixtar realleges and incorporate paragraphs 1-78 as if fully set forth herein.

8 80. Quixtar has valid contracts with its IBOs governing their participation in the  
9 Quixtar business.

10 81. Defendants have knowledge of the contracts between Quixtar and its IBOs.

11 82. TEAM and its agents intentionally and improperly interfered with Quixtar's  
12 contracts with its IBOs through the actions described above, including but not limited to:

13 (a) encouraging Quixtar IBOs to resign from the Quixtar business;

14 (b) encouraging Quixtar IBOs to remove themselves from Quixtar's auto-  
15 renewal list, thus ultimately reducing the number of IBOs that renew with Quixtar;

16 (c) telling Quixtar IBOs to stop building their Quixtar business;

17 (d) telling Quixtar IBOs not to purchase certain Quixtar products;

18 (e) causing one or more Quixtar IBOs to improperly compete with the  
19 business of Quixtar or its IBOs in breach of their contracts with Quixtar;

20 (f) causing one or more Quixtar IBOs to improperly solicit other IBOs in  
21 breach of their contracts with Quixtar;

22 (g) causing one or more Quixtar IBOs to improperly use Quixtar's  
23 confidential and proprietary LOS information in breach of their contracts with Quixtar;

24 (h) disparaging Quixtar, its products and prices;

25 (i) causing IBOs to create the false impression among those attending TEAM  
26 meetings that those who join Quixtar as IBOs are instead joining TEAM, and that  
27 Quixtar is merely a vendor or supplier of TEAM; and  
28

1 (j) causing one or more Quixtar IBOs to employ improper practices in  
2 building or maintaining their Quixtar business.

3 83. Quixtar has been damaged by such actions of Defendants, and is likely to suffer  
4 further injury if Defendants are not enjoined from their illegal acts.

5 84. Defendants' actions are per se wrongful, or if lawful, were undertaken with  
6 malice and without legal justification for the purpose invading Quixtar's contractual rights and/or  
7 business relationships. There are no legitimate business reasons to justify or motivate  
8 Defendants' actions.

9 **COUNT 4**

10 **TORTIOUS INTERFERENCE WITH ADVANTAGEOUS BUSINESS RELATIONS**

11 85. Quixtar realleges and incorporates paragraphs 1-84 as if fully set forth herein.

12 86. Quixtar has the expectancy of future business relationships with prospective IBOs  
13 who may participate in the Quixtar business.

14 87. TEAM has knowledge of those relationships and/or expectancies between Quixtar  
15 and its prospective IBOs.

16 88. TEAM and its agents intentionally and improperly interfered with Quixtar's  
17 relationships and/or expectancies with prospective IBOs through the actions described above,  
18 including but not limited to:

19 (a) soliciting prospective Quixtar IBOs into TEAM's competing multi-level  
20 marketing company;

21 (b) encouraging prospective Quixtar IBOs not to join Quixtar;

22 (c) hiding the Quixtar business opportunity from prospective Quixtar IBOs  
23 during TEAM meetings and functions;

24 (d) misrepresenting to prospective Quixtar IBOs that those who join Quixtar  
25 as IBOs are instead joining TEAM, and that Quixtar is merely a vendor or supplier of  
26 TEAM; and

27 (e) disparaging Quixtar.  
28

1 89. Quixtar has been damaged by such actions of Defendants, and is likely to suffer  
2 further injury if Defendants are not enjoined from their illegal acts.

3 90. Defendants' actions are per se wrongful, or if lawful, were undertaken with  
4 malice and without legal justification for the purpose invading Quixtar's current and/or  
5 prospective business relationships. There are no legitimate business reasons to justify or  
6 motivate Defendants' actions.

7 **COUNT 5**

8 **DECLARATORY JUDGMENT RE TEAM'S CLAIMS**

9 91. Quixtar realleges and incorporates paragraphs 1-90 as if fully set forth herein.

10 92. TEAM asserted claims challenging certain of Quixtar's business practices in the  
11 Collin County litigation, captioned Signature Management Team, LLC, d/b/a TEAM v. Quixtar,  
12 Inc., Cause No. 3800298407, 380th Judicial District, Collin County, Texas.

13 93. In that lawsuit, TEAM alleged that:

- 14 • Quixtar tortiously interfered with TEAM's prospective business relations  
15 (Count 1);  
16 • Quixtar disparaged the business of TEAM (Count 2);  
17 • Quixtar engaged in acts of unfair competition (Count 3);  
18 • Quixtar made binding promises to TEAM through its conduct in reviewing and  
19 approving TEAM BSM (Count 4); and  
20 • Quixtar has engaged in anticompetitive conduct (Counts 5 and 6).

21 94. Even though the Collin County, Texas lawsuit has been dismissed, Quixtar has a  
22 reasonable apprehension that TEAM will file a new suit, raising the same allegations. Indeed,  
23 TEAM has orchestrated 17 different lawsuits in 9 states against Quixtar since the August 9,  
2007, meeting.

24 95. Quixtar denies the allegations in the dismissed Collin County, Texas complaint.  
25 The threat that allegations may be reasserted by TEAM places a cloud over Quixtar and its IBOs.

26 96. Quixtar seeks a declaration pursuant to 28 U.S.C. § 2201 that it is not liable for  
27 any of the unlawful acts that TEAM alleged in the Collin County litigation. Specifically, Quixtar  
28 seeks a judgment declaring that:

1 (a) Quixtar has not tortiously interfered with TEAM's prospective business  
2 relations (Count 1);

3 (b) Quixtar has not disparaged the business of TEAM (Count 2);

4 (c) Quixtar has not engaged in acts of unfair competition (Count 3);

5 (d) Quixtar has not made binding promises to TEAM through its conduct  
6 (Count 4); and

7 (e) Quixtar has not engaged in an unlawful restraint of trade or  
8 anticompetitive conduct (Counts 5 and 6).

9 **PRAYER FOR RELIEF**

10 THEREFORE, Quixtar respectfully requests that the Court enter judgment in its favor  
11 and against TEAM:

12 A. Awarding Quixtar compensatory damages;

13 B. Awarding Quixtar exemplary damages;

14 C. Declaring Quixtar has not tortiously interfered with TEAM's prospective business  
15 relations;

16 D. Declaring Quixtar has not disparaged the business of TEAM;

17 E. Declaring Quixtar has not engaged in acts of unfair competition against TEAM;

18 F. Declaring Quixtar has not made binding promises to TEAM through its conduct;

19 G. Declaring Quixtar has not engaged in an unlawful restraint of trade or  
20 anticompetitive conduct;

21 H. Enjoining TEAM, and anyone acting in concert with TEAM or acting on its  
22 behalf, from:

23 1. holding any meetings in which the Quixtar LOS has been used to invite  
24 attendees;

25 2. making false or misleading statements concerning i) the salability or  
26 pricing of Quixtar products, ii) TEAM's relationship with Quixtar, or iii)  
27 the origin Quixtar products;  
28

- 1                   3.     using the Quixtar LOS to sell, distribute, or promote products and services  
2                   of TEAM or other non-Quixtar products, services, and business ventures,  
3                   or otherwise interfering with the Quixtar business of other IBOs;  
4                   4.     encouraging, soliciting or otherwise attempting to recruit or persuade any  
5                   other IBO to join TEAM or otherwise to compete with Quixtar's business;  
6                   5.     disparaging Quixtar, or otherwise engaging in activities injurious to the  
7                   reputation of Quixtar; and  
8                   6.     keeping, using or disclosing Quixtar's confidential information, or  
9                   otherwise making it available directly or indirectly to any person,  
10                  including but not limited to Quixtar's competitors.  
11            I.     Affirmatively requiring TEAM, and anyone acting in concert with TEAM or on  
12                  its behalf, to:  
13                  1.     return to Quixtar all Quixtar's LOS and other confidential information,  
14                          and all data or information that was derived from it; and  
15                  2.     disgorge all profits made as a result of its wrongful acts.  
16            J.     Directing TEAM to pay all costs incurred by Quixtar related to this proceeding,  
17                  including attorney's fees; and  
18            K.     Awarding such other relief as the Court deems equitable and just.

19   Dated: October 23, 2007

20                                   MCDONALD CARANO WILSON LLP

21  
22                                   By:           /s/ Miranda Du            
23                                   JOHN FRANKOVICH (NSBN 667)  
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28                                   Attorneys for Plaintiff

Exhibit 7



Alticor Media Blog is the official news weblog from the Alticor family of companies.

**August 10th, 2007 @ 3:59 pm ET...**

**Just go, Team**

You can [post a comment](#) or [trackback](#) from your own site.

We terminated Orrin Woodward yesterday, along with several other leaders of his field organization, named Team. We'll post our formal statement when it's ready. Informally, here's the story:

We terminated Orrin Woodward for philosophical reasons. We did it for legal reasons.

But the main reason we did it is because the way Orrin Woodward ran his organization was a disgrace to every person who's ever tried to build a Quixtar or Amway business the right way.

We have fought to clean up the reputation of our company for years. We know that one of the biggest challenges our reputation faces is misrepresentation of the Quixtar and Amway businesses to others.

And over the last several months, it became clear to us that Orrin Woodward was a poster child for a long list of bad business practices that our critics hate about our company. The other leaders we terminated – including Chris Brady, Billy Florence, Don Wilson, Randy Haugen, Tim Marks and Chuck Goetschel – also showed they were unwilling to reform.

Not telling people they were signing up with Quixtar? Woodward would hide that fact from new Independent Business Owners as long as he could.

Making people think it was easy money? Same deal.

Telling people that Quixtar was merely a "supplier," and not the company they were signing a contract with? Yup.

We'd told Woodward we had problems with the way he ran his business for years, and we worked methodically to bring those problems to resolution. We got ignored, we got lied to, and, boy, we got the runaround.

So in the end, yesterday, we tried to give him one last chance to reform.

He didn't even want to hear his options. So we terminated him. And in return, he handed us a trumped-up, trash-talking lawsuit on his way out the door. In response, we have a temporary restraining order issued by a court that prevents him from looting the business as he seeks to take his act to a new company.

So he's gone, and so are others. We are doing our best to repair the relationships Orrin Woodward damaged and protect the businesses of the people in his organization that Orrin Woodward betrayed. And we will continue building our business with thousands of people who know how to build it the right way.

We would say we were sorry to see Orrin Woodward go. But only if that were true.

## **State of Michigan**

In the Circuit Court for the County of Kent

**QUIXTAR, INC.**  
a Michigan corporation,

Plaintiff,

v

Case No.: 07-08413-CZ

Honorable Paul J. Sullivan

**Orrin Woodward, Laurie Woodward,**  
**Chris Brady and Terri Brady, individuals,**

Defendants.

---

### **ORDER DENYING PLAINTIFF'S MOTION FOR CLARIFICATION OF ORDER AND EXPEDITED DISCOVERY**

---

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**ORDER DENYING PLAINTIFF'S MOTION FOR  
CLARIFICATION OF ORDER AND EXPEDITED DISCOVERY**

At a session of this Court held in the City of Grand Rapids,  
County of Kent, State of Michigan, on the ~~26th~~ <sup>5th</sup> day of ~~September~~ <sup>Oct</sup>,  
2007.

PRESENT: HON. PAUL J. SULLIVAN  
Circuit Court Judge

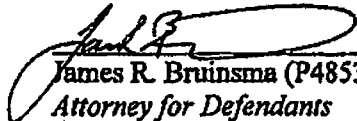
For the reasons set forth on the record, Plaintiffs' Motion for Clarification of Order and  
for Expedited Discovery is DENIED.


10-5-07

**PAUL J. SULLIVAN**

Paul J. Sullivan  
Circuit Court Judge

Approved as to Form:

  
James R. Bruinsma (P48531)  
Attorney for Defendants

  
Edward J. Bardelli (P53849)  
Attorney for Plaintiff

ATTEST: A TRUE COPY

LINDA WIERENGA  
Court Clerk

Exhibit 10

**Exhibit A**

No.	Statement	Source
1.	<p>Quixtar's business is an "illegal pyramid scheme."</p> <p>"It is now impossible for [IBOs] to earn money by legitimately selling Quixtar products."</p> <p>"The only way for [IBOs] to make money is by illegally recruiting new distributors and earning bonuses on the internal consumption of this downline – a classic illegal pyramid."</p> <p>"Quixtar has regularly, but secretly, acknowledged that its products are overpriced and not sellable."</p> <p>"Quixtar is aware of, approves, promotes, and facilitates the systematic noncompliance with the FTC's <i>Amway</i> rules . . . Quixtar's cavalier approach to these rules, while advertising the company's legitimacy by flashing the 1979 <i>Amway</i> decision, flies in the face of lawful business practices."</p> <p>"Quixtar knows that it violates the <i>Amway</i> rules and has disregarded this fact for years."</p> <p>"IBOs have no choice but to continue</p>	<p>www.freetheibo.com</p> <p>The identity of the author of these statements is not in question, as TEAM has already admitted that it owns this website. (Docket No. 54, Ex. H.) There is therefore no First Amendment issue with respect to anything Mr. Dickie or TEAM posted on this website. Quixtar intends to ask questions relating to Mr. Dickie's and TEAM's postings on this site.</p> <p>These statements were attached as Ex. D to Docket No. 54. The Court found at the February 21 hearing that they are tortious and that Quixtar "has made a sufficient showing in this case that they are entitled to some discovery" concerning this website.</p>

No.	Statement	Source
	<p>purchasing and consuming overpriced Quixtar products and recruiting new victims into the pyramid scheme, since that is the only way to make money with the Quixtar business opportunity.”</p>	
2.	<p>Quixtar’s “high prices crippled IBOs’ ability to sell at retail prices,”</p> <p>Quixtar “terminated IBOs without due process.”</p> <p>Quixtar “refused to pay year end bonuses to IBOs in good standing.”</p>	<p>Excerpt from the “Hooded Angry Man” video, posted at <a href="http://www.youtube.com/watch?v=pfjVHCtNMQQ">www.youtube.com/watch?v=pfjVHCtNMQQ</a></p> <p>The first and third of these statements were attached as Ex. E to Docket No. 54. The Court found at the February 21 hearing that they are tortious and that Quixtar “has made a sufficient showing in this case that they are entitled to some discovery” concerning this website.</p>
3.	<p>“That is the point in time when we would all need to renew our business with Quixtar. Please just hold on until your upline tells you to resign or not renew or whatever. It is way to [sic] early in the battle to give up. I am pretty sure one huge major drop of IBOs will have a much bigger [effect].”</p>	<p><a href="http://forums.freetheibo.info/search.php?fid[]=11">http://forums.freetheibo.info/search.php?fid[]=11</a></p> <p>This statement was attached as Ex. F to Docket No. 54. The Court found at the February 21 hearing that it is tortious and that Quixtar “has made a sufficient showing in this case that they are entitled to some discovery” concerning this website.</p>
4.	<p>“It sounds as though the roof is caving in on Quixtar. I am sure these resignations will pave the way for a mass exodus. All of the above [TEAM] leaders are very well respected and their departure is sure to influence others to follow suit.”</p> <p>“[Alticor, Quixtar’s parent company] will milk you for all your worth, methodically destroy your businesses, and then without</p>	<p><a href="http://theiborebellion.blogspot.com/2007_09_01_archive.html">http://theiborebellion.blogspot.com/2007_09_01_archive.html</a></p> <p>The first of these statements was attached as Ex. G to Docket No. 54. The Court found at the February 21 hearing that it is tortious and that Quixtar “has made a sufficient showing in this case that they are</p>

No.	Statement	Source
	warning pull the plug.”	entitled to some discovery” concerning this website.
5.	“Quixtar has regularly, but secretly, acknowledged that its products are overpriced and not sellable . . . . Quixtar is aware of, approves, promotes, and facilitates the systematic noncompliance with the FTC’s Amway rules . . . . Quixtar knows that it violates the Amway rules and has disregarded this fact for years.”	<a href="http://saveusdickdevos.blogspot.com/2007_10_31_archive.html">http://saveusdickdevos.blogspot.com/2007_10_31_archive.html</a>
6.	[Quixtar has] “Refuse[d] to pay bonuses to IBOs in good standing and claim[ed] the bonuses are ‘discretionary[.]’”	<a href="http://qreilly.blogspot.com/2007/12/25-years-of-business-building-flushed.html">http://qreilly.blogspot.com/2007/12/25-years-of-business-building-flushed.html</a>
7.	“Quixtar currently suffers from systemic dishonesty. There is a pattern of deceit that emanates from its core.”	<a href="http://integrityisteam.blogspot.com/">http://integrityisteam.blogspot.com/</a>
8.	“IBO’s [sic] in good standing denied bonuses they earned.”	<a href="http://ibominuteman.blogspot.com/2007/12/below-is-fascinating-little-article.html">http://ibominuteman.blogspot.com/2007/12/below-is-fascinating-little-article.html</a>
9.	<p>“I’m actually beginning to be afraid. Not afraid that I’ll be sued, or that Q/A will win in court, or anything like that. The veritable psychosis exhibited in Ada has me afraid for Orrin’s life, literally. These folks have strayed so far from rational thought that it would not take very much for them to consider arranging for a hit or a kidnapping as part of their ‘strategy.’ And we all know about their connections to Blackwater.</p> <p>Just so you know, A/Q, I have guns in my house. Shotguns and pistols. I know how to use them. And I also have a CCW (CPL). So be warned. (Go ahead, make my day).</p>	<a href="http://qssr.blogspot.com/">http://qssr.blogspot.com/</a>
10.	“Quixtar/Amway over time has evolved into a pompous corrupt organization that	<a href="http://quixtarisacultintervention.blogspot.com/">http://quixtarisacultintervention.blogspot.com/</a>

No.	Statement	Source
	<p>has done unimaginable harm to this country as well as harm to individuals caught up in its deception. Under no circumstances do they operate a 'legal' business because they operate an inventory loading (self consumption) dream inspired 'bait and switch' con of unimaginable magnitud [sic]."</p> <p>"The age of on line computer communication and media scrutiny have instead revealed the corrupt nature of Quixtar and its kingpin distributor motivational organizations. . . . Add to this mix the number of former high level distributors which were the subject of last years IBO Rebellion and who voiced what the former critics had been reporting: that AmQuix operates a overpriced product (monopolistic) scam on its own distributors."</p>	



Exhibit 11

# Dick DeVos - Save Yourself!

A PLEA TO THE DEVOS AND VANANDEL FAMILIES TO PREVENT THE DESTRUCTION OF DICK'S GUBERNATORIAL AND PERHAPS PRESIDENTIAL CHANCES BECAUSE OF THE PR HAVOC BEING WREAKED BY THEIR QUIXTAR / AMWAY ATTORNEYS.

wednesday, october 31, 2007

## Mike Mohr's Clown Act

Dick, one of my out of town friends arrived today, sat down at my computer, and directed my attention to FreetheIBO.com website where I glumly read the following:

### Q&A

Q. What is the goal of the plaintiffs in this case?

A. They seek a judicial declaration that the non-competition and non-solicitation provisions of the uniform Quixtar distributor agreement are unenforceable as a matter of law, so that the plaintiffs who choose will be able to extricate themselves from continued participation in Quixtar's illegal pyramid scheme and pursue legitimate business opportunities instead.

Q. Have the plaintiffs voiced their concerns about the business structure prior to filing this lawsuit?

A. Absolutely. The plaintiffs have had close relationships and engaged in private conversations with Quixtar/Amway founders and executive management for more than 30 years. They voiced their concerns on the business structure that are outlined in the complaint long before the lawsuit was filed.

Q. Have the Quixtar products recently been deemed "unsellable in the open retail market" by the plaintiffs?

A. IBOs have been complaining to Quixtar that their products are not sellable since at least 1997.

Q. Didn't the plaintiffs realize the time and energy it takes to sell products and become successful as an IBO?

A. The inability to sell Quixtar products is not the fault of the plaintiffs. Quixtar has priced its products well above similar retail products for the purpose of increasing its own profitability. No amount of work or complaining on behalf of the plaintiffs was successful in reducing the price of the Quixtar products or making the products more saleable. In addition, the plaintiffs were some of the most successful Quixtar distributors.

### favorites

Amway or the Highway  
Orrin Woodward on Leadership  
Chris Brady Insights  
Q'Reilly - The No Spin Zone  
Quixtar Amway Award Site  
Quixtar - The QSSR!  
Quixtar Lawsuits - Attny Perspective  
Quixtar IBO Legal News  
IBO Legal Defense Fund  
Free the IBO!  
Impartial Axiom  
Launching a Leadership Revolution  
Ron Simmons Speaks  
Free The Quixtar IBO Blog  
Making the Decision on Facts  
Quixtar IBO Rebellion Blog  
Quixtar - The Battle Against  
Free the Quixtar IBO Forum  
Quixtar Pricing

### blog archive

- ▼ 2008 (5)
  - ▼ January (5)
    - ▼ Jan 28 (2)
      - The Statesman?
      - Dick DeVos is No Favorite Son in Michigan
    - Jan 16 (1)
    - Jan 09 (1)
    - Jan 04 (1)
  - 2007 (67)

### about me



#### S. Adams

As a Quixtar Emerald who recently was fortunate enough to plug into the Team leadership training system, and having

seen significant growth in my team for the first time in years, I am dismayed by what I see happening to the good name of the Devos and VanAndel families. I

Q. How can a distributor have a successful business if the products are over-priced and difficult to sell in the open retail market?

A. It is now impossible for the plaintiffs to earn money by legitimately selling Quixtar products. The only way for Plaintiffs to make money is by illegally recruiting new distributors and earning bonuses on the internal consumption of this downline—a classic illegal pyramid.

Q. Didn't Quixtar realize its products are overpriced?

A. Quixtar has regularly, but secretly, acknowledged that its products are overpriced and not sellable.

Q. Doesn't Quixtar need to comply with the FTC's rules that exist to end illegal pyramid schemes?

A. Quixtar is aware of, approves, promotes and facilitates the systematic noncompliance with the FTC's Amway rules. These rules were designed to give a company a concrete way to avoid being deemed an illegal pyramid scheme. Quixtar's cavalier approach to these rules, while advertising the company's legitimacy by flashing the 1979 Amway decision, flies in the face of lawful business practices. Quixtar knows that it violates the Amway rules and has disregarded this fact for years.

Q. How are distributors most largely affected by the current non-competition and non-solicitation rules?

A. Distributors are prevented from leaving Quixtar in favor of pursuing a legitimate multi-level marketing business opportunity due to Quixtar's non-competition and non-solicitation rules.

Q. So ultimately, these provisions prevent distributors from escaping an illegal pyramid schemes?

A. Yes. So long as Quixtar is able to enforce the noncompete, these IBOs have no choice but to continue purchasing and consuming overpriced Quixtar products and recruiting new victims into the pyramid scheme, since that is the only way to make money with the Quixtar business opportunity.

Q. What monetary amount or recourse do the plaintiffs seek with this lawsuit?

A. Plaintiffs do not seek damages against Quixtar, or to shut Quixtar down. Rather, plaintiffs merely seek a judicial declaration that the non-competition and non-solicitation provisions of the uniform Quixtar distributor agreement are unenforceable as a matter of law.

Dick, these statements sound truthful to me. Remember, I was a Emerald Quixtar IBO and I must say, I agree with everything said here.

Why won't you just let these people go? Every day this legal circus continues, more voters tune in to the abysmal performance of your ring-master Mike Mohr and his clown act

have had nothing but the utmost respect and admiration for Rich and Jay and their contribution to the well-being of thousands of families across our great nations. The business they began is one of the best examples of Free Enterprise on the planet. The eldest scion, Dick DeVos, was unfortunately defeated last year in his bid for Governor of the State of Michigan. This blog is an appeal to both the DeVos and VanAndel families, and to the public, to weigh in on the recent tragic events promulgated by Quixtar/Amway attorneys, which, although they may be guided by a good faith effort to "protect" the good name of Quixtar and thus the DeVos and VanAndel families, are nevertheless destroying that good name. Weigh the evidence presented here and choose for yourself. Which course of action will produce the best result for these captains of industry?

[View my complete profile](#)

he calls attorneys. Certainly some of them are decent people who don't appreciate what they are being forced to do to keep their jobs. What if one of them decides to act on his conscience rather than his paycheck? What if one of them starts a mass exodus of attorneys from the Mohr / Amway / Alticor fold?

Oh sure, Mohr will be able to find some other bottom feeders like himself to keep the action going. But Dick, at the end of the day, why would you want to fight such an uphill battle to clear your name? Every day, these hired guns are putting your future in deeper and deeper jeopardy.

Why do you let it go on?!

posted by s. adams at 9:31 pm

labels: alticor, amway, ftc, mohr, quixtar

---

## 2 comments:

**john said...**

So right on! Why do they want to keep so many from achieving their dreams? Thousands have left, yet they still think their non-compete is valuable? They haven't given us any sort of severance package to provide for our families during the non-compete timeframe. They don't care about us do they?

October 31, 2007 11:38 PM

**s. adams said...**

I think you're on to them John! As fo a severence package, don't hold your breath. These are the sort of people who are responsible for worker unionization. Sam

November 8, 2007 7:58 PM

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Exhibit 12

1 JOHN J. FRANKOVICH (NSBN 667)  
MIRANDA DU (NSBN 5288)  
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3 Reno, Nevada 89505-2670  
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4 Facsimile: (775) 788-2020  
E-Mail: [jfrankovich@mcdonaldcarano.com](mailto:jfrankovich@mcdonaldcarano.com)  
5 and [mdu@mcdonaldcarano.com](mailto:mdu@mcdonaldcarano.com)

6 CEDRIC C. CHAO (CA SBN 76045)  
WILLIAM L. STERN (CA SBN 96105)  
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Facsimile: (415) 268-7522  
10 E-Mail: [cchao@mofo.com](mailto:cchao@mofo.com)  
and [wstern@mofo.com](mailto:wstern@mofo.com)  
11 and [jschurz@mofo.com](mailto:jschurz@mofo.com)

12 [Additional Counsel on Signature Page]

13 Attorneys for Plaintiff QUIXTAR INC.

14

15 UNITED STATES DISTRICT COURT

16 DISTRICT OF NEVADA

17

18 QUIXTAR INC.,

19 Plaintiff,

20 v.

21 SIGNATURE MANAGEMENT TEAM, LLC  
d/b/a TEAM,

22 Defendant.  
23

24

25

26

27

28

Case No. 3:07-cv-00505

**DECLARATION OF GARY D.  
VANDERVEN IN SUPPORT OF  
QUIXTAR'S RESPONSE TO  
ANONYMOUS ONLINE SPEAKERS'  
OBJECTION AND OPPOSITION TO  
MOTION TO COMPEL RESPONSES  
FROM BENJAMIN DICKIE**

1 I, Gary D. VanderVen, declare under penalty of perjury that the following is true and  
2 correct.

3 1. My name is Gary VanderVen. I have personal knowledge of the following and am  
4 competent to testify thereto.

5 2. I am currently employed as Director, Global Business Conduct and Rules/Business  
6 Support Materials Administration doing work for Quixtar Inc. I began my employment with  
7 Amway Corporation in December 1986. From December 1986 to May 1996, I was employed  
8 in various positions of increasing responsibility within the Amway Distributor Relations  
9 Department. In that capacity, I served as a liaison between Amway and the independent  
10 distributors of its products for virtually all aspects pertaining to Amway distributorships,  
11 including routine issues involving Amway Rules of Conduct. From May 1996 until the  
12 present, I have served in positions of increasing responsibility where I am responsible for  
13 managing the adoption, education and enforcement of the Rules of Conduct.

14 3. By virtue of my position, I have personal knowledge of the statements made in this  
15 declaration, except where I state that the information is based on my information and belief.

16 4. I incorporate into this declaration my Declaration in Support of Quixtar's Motion  
17 to Compel Responses from Deponent Benjamin Dickie, dated February 8, 2008, which is  
18 attached to Quixtar's Response to Anonymous Online Speakers' Objection and Opposition to  
19 Motion to Compel Responses From Benjamin Dickie ("Response") as Exhibit B.

20 5. I have reviewed certain online statements that are the subject of Quixtar's  
21 Response. These statements are false, and their publication injures Quixtar's business and its  
22 relationships with its Independent Business Owners (IBOs).

23 6. I have reviewed the "Hooded Angry Man" video, posted at  
24 [www.youtube.com/watch?v=pfjVHCtNMQQ](http://www.youtube.com/watch?v=pfjVHCtNMQQ). This video makes the following statements:

- 25 • Quixtar's "high prices crippled IBOs' ability to sell at retail prices;"
- 26 • Quixtar "terminated IBOs without due process;" and
- 27 • Quixtar "refused to pay year end bonuses to IBOs in good standing."

1 I have also reviewed the following statement from [http://qreilly.blogspot.com/2007/12/25-](http://qreilly.blogspot.com/2007/12/25-years-of-business-building-flushed.html)  
2 [years-of-business-building-flushed.html](http://qreilly.blogspot.com/2007/12/25-years-of-business-building-flushed.html):

3 [Quixtar has]Refuse[d] to pay bonuses to IBOs in good standing  
4 and claim[ed] the bonuses are 'discretionary[.]'

5 and the following statement from <http://ibominuteman.blogspot.com>:

6 "IBO's in good standing denied bonuses they earned."

7 These statements are false. As I stated in my previous declaration, Quixtar's products are  
8 successful and generate billions of dollars in annual sales. (Ex. B ¶ 16.) For example, the  
9 Artistry® cosmetics line and the Nutrilite® vitamin, mineral and dietary supplement line are  
10 industry-leading and are price competitive with comparable products from other industry  
11 leaders. I am unaware of the termination of any IBO, or any improper refusal to pay bonuses to  
12 any IBO, that did not comport with the Quixtar Rules of Conduct. From time to time, IBOs  
13 may be terminated or their bonuses withheld when they violate the Quixtar Rules of Conduct,  
14 which are designed to ensure compliance with the FTC's *Amway* ruling. (*Id.* ¶¶ 17-32.)  
15 Statements such as these injure Quixtar, because they disparage the Quixtar business,  
16 discourage new IBOs from signing up with Quixtar and encourage current IBOs to abandon  
17 their Quixtar businesses. As I have previously stated, tens of thousands of IBOs have either  
18 resigned or indicated that they would not renew their contracts with Quixtar since August 9,  
19 2007. (*Id.* ¶ 33.) Upon information and belief, statements like these have encouraged IBOs to  
20 leave Quixtar.

21 7. I have reviewed the following statements from  
22 [http://theiborebellion.blogspot.com/2007\\_09\\_01archive.html](http://theiborebellion.blogspot.com/2007_09_01archive.html):

23 It sounds as though the roof is caving in on Quixtar. I am sure  
24 these resignations will pave the way for a mass exodus. All of  
25 the above [TEAM] leaders are very well respected and their  
26 departure is sure to influence others to follow suit.

27 [Alticor, Quixtar's parent company] will milk you for all your  
28 worth, methodically destroy your businesses, and then without  
29 warning pull the plug.



1 These statements are false. Quixtar provides substantial support to its IBOs and expends  
2 significant resources to do so. For example, Quixtar works with the IBO trade organization, the  
3 Independent Business Owners Association International (IBOAI) to address issues of concern  
4 for IBOs. Quixtar also publishes educational materials designed to help IBOs succeed and  
5 makes them available free of charge. Quixtar has not and has no intention to destroy the  
6 businesses of its IBOs. Statements such as these injure Quixtar, because they disparage the  
7 Quixtar business, discourage new IBOs from signing up with Quixtar, and encourage current  
8 IBOs to abandon their Quixtar businesses. As I have previously stated, tens of thousands of  
9 IBOs have either resigned or indicated that they would not renew their contracts with Quixtar  
10 since August 9, 2007. (*Id.* ¶ 33.) Upon information and belief, statements like these have  
11 encouraged IBOs to leave Quixtar.

12 8. I have reviewed the following statements from

13 [http://saveusdickdevos.blogspot.com/2007\\_10\\_31\\_archive.html](http://saveusdickdevos.blogspot.com/2007_10_31_archive.html)

14 Quixtar has regularly, but secretly, acknowledged that its  
15 products are overpriced and not sellable . . . . Quixtar is aware  
16 of, approves, promotes, and facilitates the systematic  
17 noncompliance with the FTC's Amway rules . . . . Quixtar  
18 knows that it violates the Amway rules and has disregarded this  
19 fact for years.

20 These statements are false. As I stated in my previous declaration, Quixtar's products are  
21 successful and generate billions of dollars in annual sales. (Ex. B ¶ 16.) For example, the  
22 Artistry® cosmetics line and the Nutrilite® vitamin, mineral and dietary supplement line are  
23 industry-leading and are price competitive with comparable products from other industry  
24 leaders. The Quixtar Rules of Conduct are designed—and enforced—in order to ensure that  
25 Quixtar complies with the FTC's *Amway* decision. (*Id.* ¶¶ 17-29.) Statements such as these  
26 injure Quixtar, because they disparage the Quixtar business, discourage new IBOs from signing  
27 up with Quixtar, and encourage current IBOs to abandon their Quixtar businesses. As I have  
28 previously stated, tens of thousands of IBOs have either resigned or indicated that they would  
29 not renew their contracts with Quixtar since August 9, 2007. (*Id.* ¶ 33.) Upon information and  
30 belief, statements like these have encouraged IBOs to leave Quixtar.

1 9. I have reviewed the following statement from <http://integrityisteam.blogspot.com>:

2 Quixtar currently suffers from systemic dishonesty. There is a  
3 pattern of deceit that emanates from its core.

4 This statement is false. Statements such as these injure Quixtar, because they disparage the  
5 Quixtar business, discourage new IBOs from signing up with Quixtar, and encourage current  
6 IBOs to abandon their Quixtar businesses. As I have previously stated, tens of thousands of  
7 IBOs have either resigned or indicated that they would not renew their contracts with Quixtar  
8 since August 9, 2007. (Ex. B ¶ 33.) Upon information and belief, statements like these have  
9 encouraged IBOs to leave Quixtar.

10 10. I have reviewed the following statement from <http://qssr.blogspot.com>:

11 I'm actually beginning to be afraid. Not afraid that I'll be sued,  
12 or that Q/A will win in court, or anything like that. The veritable  
13 psychosis exhibited in Ada has me afraid for Orrin's life,  
14 literally. These folks have strayed so far from rational thought  
15 that it would not take very much for them to consider arranging  
16 for a hit or a kidnapping as part of their 'strategy.' And we all  
17 know about their connections to Blackwater.

18 Just so you know, A/Q, I have guns in my house. Shotguns and  
19 pistols. I know how to use them. And I also have a CCW  
20 (CPL). So be warned. (Go ahead, make my day).

21 These statements are false. Quixtar does not and has not used or threatened violence against  
22 anyone. Statements such as these injure Quixtar, because they disparage the Quixtar business,  
23 discourage new IBOs from signing up with Quixtar, and encourage current IBOs to abandon  
24 their Quixtar businesses. As I have previously stated, tens of thousands of IBOs have either  
25 resigned or indicated that they would not renew their contracts with Quixtar since August 9,  
26 2007. (Ex. B ¶ 33.) Upon information and belief, statements like these have encouraged IBOs  
27 to leave Quixtar.

28 11. I have reviewed the following seven statements from <http://www.freetheibo.com>:

- 29 • Quixtar's business is an "illegal pyramid scheme;"
- 30 • "It is now impossible for [IBOs] to earn money by legitimately selling Quixtar products;"

- 1 • "The only way for [IBOs] to make money is by illegally recruiting new
- 2 distributors and earning bonuses on the internal consumption of this downline—
- 3 a classic illegal pyramid;"
- 4 • "Quixtar has regularly, but secretly, acknowledged that its products are
- 5 overpriced and not sellable;"
- 6 • "Quixtar is aware of, approves, promotes, and facilitates the systematic
- 7 noncompliance with the FTC's Amway rules. . . . Quixtar's cavalier approach
- 8 to these rules, while advertising the company's legitimacy by flashing the 1979
- 9 Amway decision, flies in the face of lawful business practices;"
- 10 • "Quixtar knows that it violates the Amway rules and has disregarded this fact
- 11 for years;" and
- 12 • "IBOs have no choice but to continue purchasing and consuming overpriced
- 13 Quixtar products and recurring new victims into the pyramid scheme, since that
- 14 is the only way to make money with the Quixtar business opportunity."

15 These statements are false. As I stated in my previous declaration, Quixtar's products are

16 successful and generate billions of dollars in annual sales. (Ex. B ¶ 16.) For example, the

17 Artistry® cosmetics line and the Nutrilite® vitamin, mineral and dietary supplement line are

18 industry-leading and are price competitive with comparable products from other industry

19 leaders. The Quixtar Rules of Conduct are designed—and enforced—to ensure compliance

20 with the FTC's Amway ruling. (*Id.* ¶¶ 17-32.) Statements such as these injure Quixtar, because

21 they disparage the Quixtar business, discourage new IBOs from signing up with Quixtar and

22 encourage current IBOs to abandon their Quixtar businesses. As I have previously stated, tens

23 of thousands of IBOs have either resigned or indicated that they would not renew their

24 contracts with Quixtar since August 9, 2007. (*Id.* ¶ 33.) Upon information and belief,

25 statements like these have encouraged IBOs to leave Quixtar.

26 12. I have reviewed the following statement from

27 <http://quixtarisacultintervention.blogspot.com>:

28 "Quixtar/Amway over time has evolved into a pompous corrupt

29 organization that has done unimaginable harm to this country as

30 well as harm to individuals caught up in its deception. Under no

circumstances do they operate a 'legal' business because they

operate an inventory loading (self consumption) dream inspired

'bait and switch' con of unimaginable magnitude [sic];" and

The age of on line computer communication and media scrutiny

have instead revealed the corrupt nature of Quixtar and its

kingpin distributor motivational organizations. . . . Add to this

1 mix the number of former high level distributors which were the  
2 subject of last years IBO Rebellion and who voiced what the  
3 former critics had been reporting: that AmQuix operates a  
overpriced product (monopolistic) scam on its own  
distributors.”

4 These statements are false. As I stated in my previous declaration, Quixtar’s products are  
5 successful and generate billions of dollars in annual sales. (Ex. B ¶ 16.) For example, the  
6 Artistry® cosmetics line and the Nutrilite® vitamin, mineral and dietary supplement line are  
7 industry-leading and are price competitive with comparable products from other industry  
8 leaders. The Quixtar Rules of Conduct are designed—and enforced—to ensure compliance  
9 with the FTC’s *Amway* ruling. (*Id.* ¶¶ 17-32.) Statements such as these injure Quixtar, because  
10 they disparage the Quixtar business, discourage new IBOs from signing up with Quixtar and  
11 encourage current IBOs to abandon their Quixtar businesses. As I have previously stated, tens  
12 of thousands of IBOs have either resigned or indicated that they would not renew their  
13 contracts with Quixtar since August 9, 2007. (*Id.* ¶ 33.) Upon information and belief,  
14 statements like these have encouraged IBOs to leave Quixtar.

15 I declare under penalty of perjury under the laws of the United States of America that  
16 the foregoing is true and correct and that I am competent to testify to the facts contained in this  
17 Declaration if called as a witness.

18  
19 Dated: August 25, 2008

Signed: 

Gary D. VanderVen

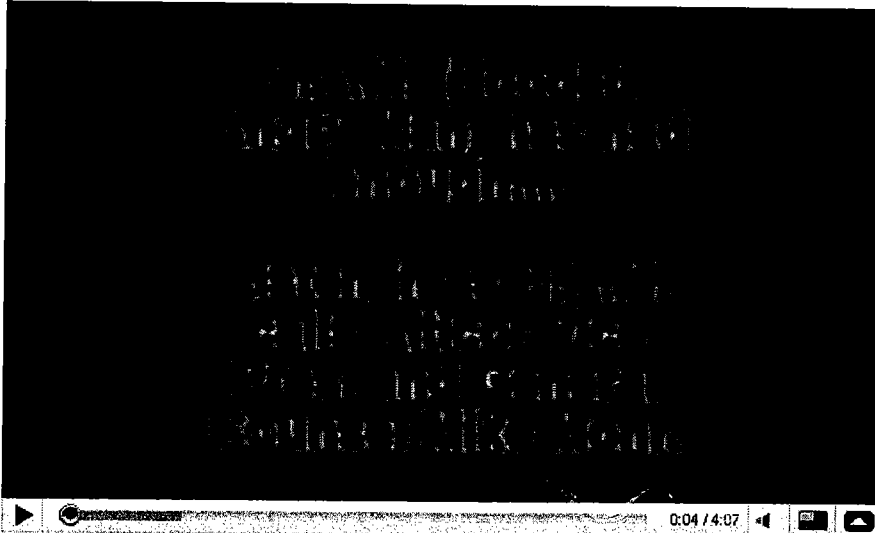
Exhibit 13

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## H.A.M. phones Alticor's Mike Mohr



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open a big can of matrix whoop arse on those pyramid building fakes

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theiborebellion

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February 02, 2008

(more info)

H.A.M. (Hooded Angry Man) calls Alticor Amway Quixtar's Vice President and General Counsel to put him on notice of what is about to occur to his floundering company.

URL <http://www.youtube.com/watch?v=pfjVHCtNM>

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Exhibit 14

Doug, it will take courage to make the right choices to correct the things that need fixing in this business. I am confident that if those choices are made this business will become the greatest success story in our lifetime. I know that the suggestions that I am making will work. If we do not make the decision to fix the problems that are hindering us from going from good to great, then it is my feeling that some other corporation will eventually see what needs to be done and will do it. This is our opportunity to make this business the greatest business opportunity in the country. I want to forge ahead with you to a fantastic future. I want to give genuine help to those who are struggling financially. And finally, I want to see this business be used of God to help bring back to our country the Godly principles that it was founded upon. This is a goal worth striving for and a life worth living. Sir Edmund Burke one said, "The only way for evil to prosper is for good men to do nothing."

Thank you for your time in reading this letter. I would love to take you to lunch sometime and give you copies of the books from which I have quoted. If I can serve the Quixtar team in any way, please feel free to call or email me.

God Bless,

Orrin Woodward

Posted by Q'Reilly at 10:11 PM

5 comments

SUNDAY, DECEMBER 9, 2007

## 25 Years of Business Building Flushed at Amquix "Discretion"

If you haven't had a chance to read about the Amway UK Diamonds that are living the nightmare called "Amquix Discretion", click on the link below and read the unbelievable tale of these Diamonds that were in good standing with the company for 25 YEARS(!) until Amway



needed a scapegoat. This is just scary stuff for anyone trying to build an Amway/Quixtar business right now (*Is anyone actually trying to do that?!*). Knowing how this corporation has treated some of its top business builders of all-time here in the U.S. (Woodward, Brady, Haugen, Florence, Goetschel, Wilson et al.), and now seeing what they are doing to their top leaders in the UK, should cause you to scratch your head and wonder what these Amquix folks are up to. My guess?...Getting rid of all those pesky IBO's!

I have mentioned this in previous posts, but ask yourself this....What are the top 3 things you would do (in the U.S. market) if you were Amquix and wanted to get rid of your IBO sales force and start selling directly to the public from the store shelves? I'll get you started with some ideas:

- 1) **Name the company AMWAY** (this will clear out the majority of the U.S. IBO's!)
- 2) Terminate and malign well known and beloved leaders
- 3) Deem the IBOAI Board powerless (that represents the voices in the field!)
- 4) Publicly refer to IBO's as "property"
- 5) Refuse to pay bonuses to IBO's in good standing (and claim the bonuses are "discretionary")
- 6) Post the following on the Alticor official blog "Just Go, Team!"
- 7) Ok...you finish the list....my fingers are getting tired, and I know I could easily take this list of moronic moves (*or maybe well thought out plans to rid the company of IBO's*) up to about 100!!

If you are following the court case that the UK Government has brought against Amquix, you have seen that Amquix is pointing directly to the IBO's as the source of ALL their problems. (*Hmmm...then why did Amquix massively slash prices the minute the Government began investigating??*) Unfortunately, for the Scrivens...Amquix took aim and bagged their scapegoat...

Take the time to read the following link:  
<http://www.jerryandmandy.co.uk/>

If you are still clinging to the hope that this company will be there for its IBO's, watch the following video. It is one of Amquixes top executives describing what a fantastic organization Jerry and Mandy Scriven had built in the UK. Shortly afterwards, Amquix terminated the Scrivens...

<http://www.youtube.com/watch?v=64WUmBIPq1o>

Posted by Q'Reilly at 6:38 PM

6 comments



TUESDAY, DECEMBER 4, 2007

### "Hey...I EARNED that Bonus!!"

Please read the letter to Quixtar from a current IBO who just happens to use the TEAM training system to build his business. This is EXACTLY why anybody who is still associated with this company should be VERY concerned. You do the work...you may or may not get paid. If you want to argue about it, start digging into your bank account cause Amquix will force you to take a financial blood bath paying attorneys and mediators to get your bonuses. By the way...this is just one example of what is happening to many current IBO's that use TEAM training materials...

November, 29, 2007

Quixtar/Alticore  
7575 Fulton St. E  
Ada, Mi 49355

Re: QBI Bonus and Founders Platinum Bonus

Exhibit 15

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12 [Additional Counsel on Signature Page]

13 Attorneys for Plaintiff QUIXTAR INC.

14  
 15 UNITED STATES DISTRICT COURT  
 16 DISTRICT OF NEVADA

17  
 18 QUIXTAR INC.,

19 Plaintiff,

20 v.

21 SIGNATURE MANAGEMENT TEAM, LLC  
 d/b/a TEAM, APOLLO WORKS HOLDINGS,  
 22 INC., GREEN GEMINI ENTERPRISES, INC.,  
 NORTH STAR SOLUTIONS, INC., NORTHERN  
 23 LIGHTS SERVICES, INC., SUNSET  
 24 RESOURCES, INC., and SKY SCOPE TEAM,  
 INC.,

25 Defendants.

Case No. 3:07-cv-00505-ECR-RAM

**PLAINTIFF QUIXTAR INC.'S  
 MOTION TO COMPEL  
 DEPONENT BENJAMIN DICKIE  
 TO TESTIFY ABOUT  
 ADDITIONAL ANONYMOUS  
 ONLINE SPEAKERS**

PLAINTIFF'S MOTION TO COMPEL TESTIMONY  
 RE ANONYMOUS ONLINE SPEAKERS

sf-2652081

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# I. INTRODUCTION TABLE OF CONTENTS

Several months ago, TEAM founders Orrin Woodward and Chris Brady acknowledged the challenge they faced communicating with their former IBOs downline from them in the Quixtar LOS after Woodward and Brady were terminated in August 2007. And Woodward and Brady trumpeted the ingenuity of their solution: the Internet.

Nearly a year ago (at the time of this writing) we found a strange need to communicate "from the grave" you could say. It was almost as if we were in enemy territory (figuratively, of course) and all lines of communication had been severed. We knew we had to communicate with the rest of the troops or victory would be jeopardized (slightly melodramatic but we LOVE military examples!) If only we had a way to transmit and receive information without the use of phones, radios, letter carriers . . . etc. Just then, it dawned on us. There was a way, created years ago for just such a scenario . . . the internet!

(Ex. G, Brady and Woodward, *Leadership: Tidbits and Treasures*, Acknowledgements (Obstacles Press, July 2008)). The "grave" Woodward and Brady found themselves in was a court-ordered injunction enjoining them from (1) competing against Quixtar and (2) soliciting Quixtar IBOs to join them in their new venture. Their solution was a carefully crafted, professionally orchestrated internet campaign to disparage Quixtar and solicit Quixtar IBOs to defect from Quixtar and align with TEAM in its competing business.

In the fourteen months since Benjamin Dickie refused to answer questions about TEAM's Internet campaign against Quixtar, the structure and breadth of TEAM's campaign has come into sharper focus. Ashton Partners, a public relations firm, launched the website "freetheibo.com" (the "Free The IBO website") in August 2007 to further Woodward and Brady's strategy. Additionally, TEAM created a virtual, online community to assist its leaders in the process of convincing IBOs to leave Quixtar. TEAM hired Margaret Ross, a web communications specialist, in September 2007, to develop interactive blogs and forums. She connected the sites, and other TEAM-initiated sites, through a series of hyperlinks. In this way, the Free The IBO website, forum, and blog became the "hub" or portal for TEAM to advance Woodward and Brady's business objectives. The strategy was successful. The portal spawned literally dozens of

1 TEAM blogs, forums, and videos dedicated to rallying the self-proclaimed “freedom fighters” in  
2 their battle against Quixtar.

3 In order to ensure that TEAM members were led to the “right” sites, Benjamin Dickie  
4 created and managed a blog called [www.freetheiboblog.typepad.com](http://www.freetheiboblog.typepad.com) (the “Free The IBO Blog”).  
5 On a daily basis, Mr. Dickie directed traffic—identifying and promoting websites, advancing and  
6 publishing claims, and encouraging TEAM members to visit. To make it easier, Mr. Dickie  
7 embedded a link within his daily postings so visitors could move easily to the recommended sites.  
8 To cover TEAM’s tracks, Dickie registered the blog under a pseudonym using his home address.<sup>1</sup>  
9 Despite his stealth tactics, Dickie’s intent was clear: the coordination of a professional campaign  
10 to disparage Quixtar, promote TEAM leaders, and solicit TEAM members to leave Quixtar and  
11 follow Woodward and Brady to their new venture. Mr. Dickie’s execution was successful. On  
12 the day Orrin Woodward announced his decision to join Mona Vie on his blog—a site managed  
13 by Mr. Dickie—it received nearly 100,000 hits, fifty times the average daily traffic.

14 Throughout the last year, TEAM has made every effort to frame Mr. Dickie’s testimony  
15 as a question of protecting “anonymous” bloggers exercising their rights under the First  
16 Amendment. By focusing on “who,” TEAM has obscured and delayed discovery of “what”—  
17 namely, what Mr. Dickie has done at the behest of TEAM to develop web content and direct  
18 TEAM members to websites developed by others.

19 This Court ruled in its Amended Order Granting In Part and Denying In Part Quixtar  
20 Inc.’s Motion to Compel Responses from Deponent Benjamin Dickie (the “January 15 Order”)  
21 that Mr. Dickie is to answer questions regarding websites, blogs, and forums that he created,  
22 administered, or sponsored. This Court further ordered Mr. Dickie to identify the authors of  
23 certain damaging statements.

24 This motion identifies 24 additional statements from websites, blogs, and videos about  
25 which Quixtar seeks discovery. These statements fall into three distinct categories.

26 <sup>1</sup> Mr. Dickie attempted to hide his and TEAM’s involvement in the Free The IBO Blog by  
27 registering the blog under the name “Peter Petrelli,” the name of a fictional character from the  
28 television show *Heroes*.

1 First, Quixtar seeks testimony relating to fifteen false and misleading statements of  
2 purported fact about Quixtar from eight different sources. These purported statements of fact  
3 span a range of subjects, including Quixtar's alleged failure to pay bonuses to IBOs in good  
4 standing, Quixtar's purported knowledge that it is an illegal pyramid, and Quixtar's purported  
5 attrition rate for IBOs. As this Court has previously recognized, these types of statements meet  
6 the *Doe v. Cahill* standard. Mr. Dickie must identify the speaker and respond to questioning  
7 about the circumstances under which the statements were created and posted.

8 Second, Quixtar seeks testimony relating to false statements of fact designed to enhance  
9 TEAM's reputation. These statements are discoverable under *Doe v. Cahill* because they  
10 constitute tortious interference with Quixtar's IBO contracts and prospective business relations:  
11 they are misrepresentations that Quixtar is dishonest and that Quixtar has falsely characterized  
12 what occurred at the August 9, 2007 meeting. Because they are false statements that interfered  
13 with Quixtar's contracts and prospective relations, they are tortious and thus discoverable under  
14 *Doe v. Cahill*.

15 Third, Quixtar seeks testimony regarding content encouraging Quixtar IBOs to leave  
16 Quixtar, not renew, join a competitor, or otherwise disregard the Quixtar Rules of Conduct. Such  
17 statements are directly relevant to injuries caused by TEAM in that they constitute evidence of  
18 interference. Quixtar has shown that TEAM posted statements on the Free The IBO Website and  
19 its related blogs claiming that Quixtar is an illegal pyramid scheme; that Quixtar knowingly  
20 violates the law; and that Quixtar's products are not sellable. Quixtar has also shown that other  
21 blogs to which TEAM directed IBO readers via hyperlink contained additional statements urging  
22 IBOs to leave Quixtar. Finally, Quixtar has shown that after these statements began appearing in  
23 the online community TEAM created, tens of thousands of IBOs did leave Quixtar. Both types of  
24 statements – the false and misleading purported factual representations, and the exhortations to  
25 IBOs to quit – are evidence of TEAM's tortious interference, and both are discoverable.

26 Collectively, the statements reflect a carefully orchestrated campaign designed by TEAM  
27 to damage Quixtar through false and misleading statements, and solicit Quixtar IBOs to leave  
28 Quixtar and join Woodward and Brady in a competing venture.



## II. OVERVIEW OF TEAM INTERNET CAMPAIGN

### A. Ashton Partners' Creation of the Free The IBO Website

TEAM retained Ashton Partners in August 2007 to perform standard public relations services to TEAM and its principals. In an article published in August 2007, TEAM's counsel explained that Ashton Partners was:

brought on board to provide strategic communications counsel, drive media relations and outreach, and manage the plaintiff's Web site, [www.freetheibo.com](http://www.freetheibo.com).

(See Ex. A, ("Quixtar, IBOs Use Web to Spar," PR Week US article dated August 31, 2007) at p.

1.) TEAM specifically retained Ashton Partners to "help manage the Internet traffic" relating to this litigation. (See Ex. B attached hereto ("Bitter Amway Fight Has Local Tie," Colorado Law Week article dated week of September 3, 2007) at p. 2.)

The principal means of executing TEAM's communications and media strategy was launching the Free The IBO Website. The website served as a vehicle for TEAM and its leaders to communicate anonymously with current and former Quixtar IBOs, to convey TEAM's targeted messages efficiently to large groups of IBOs that TEAM and its leaders directed to the blogs, and ultimately to wage TEAM's wrongful campaign against Quixtar. TEAM and its leaders wanted not only the ability to communicate through websites to solicit current and former Quixtar IBOs, but also the interactivity offered by blogs and forums. Accordingly, they hired Margaret Ross.

### B. The Creation of a Network of Blogs, Forums, and Videos

Margaret Ross was engaged by TEAM in August 2007 to consult on a "Strategic Communication Initiative" and to serve as a "Project Director" for TEAM's web communications strategies. Ms. Ross provided both procedural and substantive input into the contents of TEAM-related websites. Ms. Ross identified interactivity—the opportunity for TEAM leaders and members to interact and participate—as another way to bolster TEAM's web strategy. TEAM's leaders were all subject to non-solicitation agreements in their IBO contracts. TEAM therefore devised a strategy to use the anonymity of the Internet to assist its leaders in asking other IBOs to leave Quixtar and/or join another multi-level marketing company. So TEAM, with the assistance of Ms. Ross, established a companion blog, Free The IBO Blog, and a forum hyperlinked to the

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Free The IBO website. Next, TEAM used the Free The IBO Blog to direct readers to a multitude of other sites, most of which were run by purportedly “anonymous” parties. These other sites contained false and damaging statements about Quixtar and/or direct solicitations to IBOs to leave Quixtar and follow TEAM.

### C. Directing Traffic on the TEAM Blogosphere: Benjamin Dickie

To direct readers of the Free The IBO Blog to the other sites containing solicitations and additional tortious statements, TEAM posted a column of “favorite” sites, including Save Us Dick Devos, QSSR, Q'Reilly, and many others, on the right-hand side of the Free The IBO Blog's front page. This column contained hyperlinks that readers could click to reach the other sites. TEAM wanted to be sure that all of its IBO readers would click on the hyperlinks that would take them to these additional sites. So in addition to posting hyperlinks on its front page, TEAM also posted articles on its blog in which it explicitly instructed IBO readers to “check out” these other blogs and “share with a friend.” Mr. Dickie was tasked with directing traffic on the TEAM blogosphere. Mr. Dickie routinely directed IBOs to read the other sites and provided hyperlinks to them. Mr. Dickie even suggested that IBOs “check in daily” with the other sites. A set of the twenty-nine posts on the Free The IBO Blog instructing readers to view other blogs is attached as Exhibit C. Examples of Mr. Dickie's efforts to flag the sites he wanted IBOs to see include:

- “I visited a site today called ‘Quixtar Lost My Cents’ [**provides link to Quixtar Lost My Cents Blog**] . . . . The ‘Quixtar Lost My Cents’ blog is authored by a mother of four children . . . . This poor mom is just trying to make ends meet and provide for her family. . . . **Be sure to check in daily to the ‘Quixtar Lost My Cents’ blog[.]**” Free The IBO Blog, September 22, 2007 (Ex. C at pp. 1-2 (emphasis added)).
- “Amway/Quixtar/Alticor has recently went [sic] on a warpath against internet bloggers [**provides link to Quixtar Lost My Cents Blog**]. Good thing we live in America, the land of the free!! For more details check out *The IBO Rebellion* [**provides link to The IBO Rebellion Blog**].” Free The IBO Blog, October 18, 2007 (Ex. C at p. 10).
- “I recently reviewed this article from the ‘Quixtar Soviet Socialist Republic’ blog. It is an interesting read, and you can click here [**provides link to QSSR Blog**] for other great articles on Quixtar policy at play. . . .” Free The IBO Blog, October 22, 2007 (Ex. C at p. 13) (emphasis added).
- “Be sure to stay tuned to ‘Quixtar Lost My Cents’ daily as great posts continue to highlight the crazy ridiculous pricing structure that Amway supports. [**provides link to Quixtar Lost My Cents Blog**].” Free The IBO Blog, October 23, 2007 (Ex. C at p. 15).

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- 1 • "Barrister has recently re-located to Google's *Blogger*. **You may want to update**
- 2 **your favorite links** for those of you who wish to stay up to date with Barrister's
- 3 **[provides link to Barrister Quixtar Lawsuit Blog]** legal perspective regarding the
- 4 lawsuits that have taken place in recent months[.]" Free The IBO Blog, October 31,
- 5 2007 (Ex. C at p. 20) (emphasis added).
- 6 • "I cam[e] across another blog has online [sic] titled, *Amway Or The Highway*
- 7 **[provides link to Amway Or The Highway Blog]**. How many more blogs will we
- 8 see here in the future? They keep popping up left and right. This particular blog has a
- 9 few great posts featured on their blog in the short time that it was launched, and **I am**
- 10 **excited to check back in as they post more articles in the future.**" Free The IBO
- 11 Blog, November 2, 2007 (Ex. C at p. 22) (emphasis added).
- 12 • "A new blog has sprouted up in recent weeks called Quixtar-Less, I Need Your Help
- 13 **[provides link to Q-Less, I Need Your Help Blog]**. . . . Q-Less raises a number of
- 14 questions in their two posts that they have featured on their blog since they made it
- 15 live and **it seems that these are questions that most IBOs would like to have**
- 16 **answered by the company.**" Free The IBO Blog, November 17, 2007 (Ex. C at p.
- 17 27) (emphasis added).
- 18 • "Another blog has surfaced in the midst of the Quixtar v. Team disputes, which have
- 19 been taking place over the past few months. The blog is titled *The Quixtar Whistle*
- 20 *Blower* **[provides link to The Quixtar Whistle Blower Blog]**. . . . **This may be of**
- 21 **interest to you to view and share with a friend.**" Free The IBO Blog, November 23,
- 22 2007 (Ex. C at p. 28) (emphasis added).
- 23 • "Q'Reilly **[provides a link to Q'Reilly Blog]** featured a letter on his blog that was
- 24 written by an IBO in good standing with Quixtar seeking to obtain their QBI bonus. . .
- 25 . It looks as though this couple is getting the run around and Quixtar is playing games
- 26 with their money. Can Quixtar do this to other IBOs in the field? I sure hope this
- 27 does not become an epidemic." Free The IBO Blog, December 6, 2007 (Ex. C at p.
- 28 29).
- "The below post appeared on the QSSR blog **[provides link to QSSR Blog]** and is
- pretty powerful." Free The IBO Blog, December 26, 2007 (Ex. C at p. 33).
- "The author of the blog *Dick DeVos – Save Yourself!* **[provides link to Save Us Dick**
- DeVos Blog]* featured an article titled, 'Quixtar Spys on Team in Ladies Room. . . . Be
- sure to check in to *Dick DeVos – Save Yourself!* to read the article and other
- information regarding some interesting Quixtar/Amway/Alticor business policies and
- procedures." Free The IBO Blog, December 27, 2007 (Ex. C at p. 35).

#### D. A Deluge of IBO Resignations Followed TEAM's Anti-Quixtar Blog Campaign

Not long after the launch of TEAM's blog strategy, Quixtar received approximately 9,166 resignation letters. During the months of September and October 2007, Quixtar received 20,430 resignation letters, and more than 92% of them originated from TEAM-affiliated IBOs. For the five-month period between August 9, 2007 and December 31, 2007, Quixtar received 26,242 resignation letters. For the previous three-and-one-half-year period preceding this time frame,

1 Quixtar received only 118 resignation letters. (Ex. D (March 9, 2009 Declaration of Gary  
2 VanderVen) at ¶ 10.)

### 3 **III. PROCEDURAL HISTORY**

4 Quixtar incorporates the extensive factual history set forth in its previous Opposition to  
5 Benjamin Dickie's Objections to Magistrate Judge's April 7, 2008 Order (Dkt. No. 141 at pp. 3-  
6 10). Without repeating that full history here, we briefly summarize it as follows:

7 On January 18, 2007, Quixtar began the deposition of Mr. Dickie. Quixtar asked a  
8 number of questions about TEAM's online activities and Mr. Dickie's knowledge of websites,  
9 blogs, and videos that contained tortious statements of disparaging misrepresentations and  
10 solicitations. On the advice of counsel, Mr. Dickie refused to answer questions about those sites.  
11 Mr. Dickie claimed that the First Amendment right to anonymity allowed him to refuse to answer  
12 questions in both categories.

13 On February 8, 2008, Quixtar moved for an order compelling Mr. Dickie to answer  
14 questions about his knowledge regarding the websites, blogs, and videos that contain false and  
15 harmful statements about Quixtar. (Dkt. No. 54.) Both Mr. Dickie and TEAM opposed. (Dkt.  
16 Nos. 62, 65.) After a lengthy hearing, the Court issued an Order on February 21, 2008 granting  
17 Quixtar's motion. (Dkt. No. 72.) Mr. Dickie moved to clarify and objected to the February 21  
18 Order (Dkt. No. 84), and Quixtar opposed. (Dkt. No. 95.) On April 7, 2008, the Court issued  
19 another order requiring Mr. Dickie to answer questions regarding sites that Mr. Dickie, other  
20 TEAM employees, or TEAM leaders created or on which they posted content. Mr. Dickie filed  
21 Objections to the April 7 Order with the District Court on April 24, 2008 (Dkt. No. 124), and  
22 Quixtar opposed. (Dkt. No. 141.)

23 On July 7, 2008, Judge Reed issued an Order on Mr. Dickie's Objections. The District  
24 Court ruled that Mr. Dickie had failed to establish that he had standing to object to the April 7  
25 Order. (Dkt. No. 167 at 18.) The District Court therefore vacated the April 7 Order and  
26 remanded the matter for further proceedings. (*Id.* at 22.) The Court instructed that Mr. Dickie  
27 and TEAM should inform the anonymous parties that Mr. Dickie might be obligated to reveal  
28 their identities so that any anonymous party who did have standing to object to the April 7 Order

1 could do so. (*Id.* at 20.) The District Court also ruled that if an anonymous speaker with standing  
 2 filed an objection, then this Court should apply the analysis set forth in *Doe v. Cahill*, 884 A.2d  
 3 451 (Del. 2005) (discussed in detail below), to determine whether Quixtar was entitled to  
 4 discover that anonymous speaker's identity. (*Id.* at 21.)

5 After the District Court remanded the matter, the parties submitted a scheduling order that  
 6 included a list of statements from ten different websites, blogs, and videos that Quixtar contended  
 7 were tortious. (Dkt. No. 181.) Mr. Dickie stated that he knew six of these authors and did not  
 8 know the remaining four.<sup>2</sup> He notified the six anonymous parties of the action, and they filed  
 9 objections under pseudonyms on August 13, 2008. (Dkt. No. 194.) Quixtar filed a response on  
 10 August 25. (Dkt. No. 212.) On November 12, 2008, the Court granted Quixtar's request for  
 11 discovery as to two of the six statements and denied it as to the other four.<sup>3</sup> (Dkt. No. 261.) The  
 12 Court issued a final Amended Order on January 15, 2009. (Dkt. No. 330.)<sup>4</sup>

13 On February 23, 2009, the Court ruled that the parties must file any motions to compel  
 14 further discovery within fourteen days, by March 9, 2009. (Dkt. No. 370 at 2.) Quixtar  
 15 performed another analysis of the sites that are hyperlinked to the Free The IBO website and the  
 16 Free The IBO Blog and discovered additional tortious statements on those sites, including  
 17 damaging misrepresentations about Quixtar, misrepresentations about TEAM that are harmful to  
 18 Quixtar, and express solicitations of IBOs. Pursuant to the procedure outlined in Judge Reed's  
 19 July 7 Order, Quixtar notified counsel for Mr. Dickie by letter on March 6 that when Mr. Dickie's  
 20 deposition resumes, Quixtar intends to seek testimony regarding these additional anonymous  
 21  
 22

23 <sup>2</sup> Because Mr. Dickie claimed not to know the identities of the speakers of four of the  
 24 tortious statements Quixtar identified, those statements were not at issue when the anonymous  
 25 speakers filed objections.

26 <sup>3</sup> Both Quixtar and Mr. Dickie filed objections to this portion of the November 12 Order.  
 27 (Dkt. Nos. 267, 269.) Those objections are pending.

28 <sup>4</sup> Mr. Dickie and TEAM both filed objections to the January 15 Order (Dkt. Nos. 342 and  
 343), and Quixtar opposed. (Dkt. No. 368.) Those objections are pending.



1 speakers. (*See Ex. E.*)<sup>5</sup> Counsel for Mr. Dickie has represented that Mr. Dickie will not testify  
2 about purportedly anonymous speakers without a court order.

### 3 IV. ARGUMENT

#### 4 A. Legal Standard

5 The District Court ruled in its July 7 Order that if Anonymous Speakers opposed an order  
6 requiring Mr. Dickie to identify them, this Court should apply the test set forth in *Doe v. Cahill*,  
7 884 A.2d 451 (Del. 2005). In that case, a plaintiff sought to identify an anonymous speaker who  
8 had posted unpleasant comments about him on a website. *Id.* at 454. The Delaware Supreme  
9 Court ruled that the speaker had a right under the First Amendment to post his statements  
10 anonymously, and that the plaintiff could overcome that right and obtain discovery relating to the  
11 speaker's identity only if he first made a showing, sufficient to overcome a motion for summary  
12 judgment, that the anonymous party's speech was tortious and thus not protected under the First  
13 Amendment. *Id.* at 460.

14 In the present case, Quixtar has uncovered eighteen purported statements of fact, posted  
15 across eight different blogs and videos, that are both false and highly damaging to Quixtar.  
16 Although the speakers who posted these statements are purportedly anonymous, each of these  
17 statements is hyperlinked to TEAM's Free The IBO Blog. As outlined above, these statements  
18 were integral to TEAM's strategy of hiding behind the anonymity of the Internet to spread lies  
19 about Quixtar and to solicit IBOs to leave Quixtar and join a competing MLM. And, as shown in  
20 the VanderVen Declaration (Ex. D), these statements were highly effective in encouraging tens of  
21 thousands of IBOs to abruptly resign from Quixtar, which caused Quixtar to lose millions of  
22 dollars in sales. Accordingly, Quixtar has established that the statements set forth below are  
23 tortious under *Doe v. Cahill*, and Mr. Dickie should be ordered to testify about each of the eight  
24 "Anonymous Speakers" behind these tortious statements.

25  
26 <sup>5</sup> In its January 15 Order, the Court denied discovery relating to several of the Anonymous  
27 Speakers at issue here (The IBO Rebellion, QSSR, and Q'Reilly), based on its finding that the  
28 statements at issue in Quixtar's previous motion did not satisfy the *Doe v. Cahill* standard. The  
present motion seeks discovery based on different statements by these Speakers.

1 In addition to using the Internet to post false and disparaging statements, TEAM and its  
 2 agents also posted direct, explicit solicitations to IBOs to leave Quixtar and join TEAM in a  
 3 competing MLM. Quixtar has uncovered six such express solicitations posted on four different  
 4 "anonymous" blogs that are directly hyperlinked to TEAM's Free The IBO Blog. To the extent  
 5 that these statements were posted by TEAM or persons acting at TEAM's direction, they go  
 6 directly to the tortious interference by TEAM and are discoverable under *Doe v. Cahill*. Mr.  
 7 Dickie should therefore be required to testify about these four Anonymous Speakers as well.<sup>6</sup> A  
 8 full set of the 24 statements at issue, as well as the blog pages on which they are found, is set  
 9 forth in a chart attached as Exhibit F.

10 **B. Quixtar Is Entitled to Discover the Identity of Anonymous Speakers Who**  
 11 **Made False and Disparaging Statements**

12 Under *Doe v. Cahill*, Quixtar is entitled to discover the identity of an Anonymous Speaker  
 13 once Quixtar (1) identifies the exact statement at issue, and (2) provides evidence that would be  
 14 sufficient to defeat a hypothetical motion for summary judgment showing that the statement is  
 15 tortious. 884 A.2d at 460. The statements set forth below satisfy this standard.

16 **1. Quixtar Has Provided Evidence of False and Damaging Purported**  
 17 **Statements of Fact About Quixtar from Eight Anonymous Speakers.**

18 As shown in the chart attached as Exhibit F, Quixtar has provided evidence that eight  
 19 different Anonymous Speakers posted a total of fifteen false and damaging purported statements  
 20 of fact about Quixtar on the Internet. Each of the blogs on which these statements appeared was  
 21 hyperlinked from TEAM's Free The IBO Blog. The statements, discussed individually below,  
 22 assert that Quixtar has committed various harmful misdeeds, or asserts purported facts  
 23 disparaging and discrediting Quixtar as a business. Each of these statements is false, and Quixtar  
 24 provided evidence of their falsity in the VanderVen Declaration (Ex. D). Accordingly, Quixtar is  
 25 entitled to discovery on each of these statements.

26 <sup>6</sup> Two of these four final Anonymous Speakers also posted false and disparaging  
 27 statements, and Quixtar also seeks discovery relating to their identities in Section IV.B. Thus,  
 28 there are ten Anonymous Speakers at issue.

a. **The Court Has Already Ruled that Quixtar Is Entitled to Discovery on the Speaker of the False Statement that Quixtar “Refused to Pay Year End Bonuses to IBOs in Good Standing.”**

At the November 12 hearing, Quixtar and the Anonymous Speakers argued at length over the statement on the “Hooded Angry Man” video that Quixtar “refused to pay year end bonuses to IBOs in good standing.” Quixtar argued that the statement purported to state a fact, and Quixtar provided evidence that the statement was false. (Dkt No. 212 at 12-13; Ex. A at ¶ 6; Ex. B at ¶¶ 16-32.) The “Hooded Angry Man” argued that the statement was not actionable because it was true, opinion, parody, and satire. (See Dkt. No. 194 at 8.) The Court rejected each of the Hooded Angry Man’s arguments and found:

[I]t seems to me that these are not statements of opinion, that these are made as statements of fact, these three statements, and, as far as the prima facie case, are raising a material issue of fact. They could be considered defamatory I believe. . . . Nobody could say that this is satire; nobody could say that this is hyperbole. These are made as statements of fact, and given that, I think that Quixtar has met the *Cahill* standard, and that it’s going to be the order that Mr. Dickie has to testify about his knowledge of who’s made those statements for Hooded Angry Man.

(R. Tr. 11/12/2008 at 23-24.) Accordingly, the Court ordered Mr. Dickie to testify about the identity of the Hooded Angry Man. (Dkt. No. 330 at 2.)

In the present motion, Quixtar seeks to compel Mr. Dickie to testify about five different Anonymous Speakers (Q-Less, I Need Your Help; Q’Reilly; QSSR; The IBO Rebellion; and Barrister Quixtar Lawsuit) who made the *same false and actionable statement* – that Quixtar refused to pay bonuses to IBOs who had earned them – on their blogs. Again, Quixtar has provided evidence that these purported factual statements are false. (Ex. D ¶ 6.) Because the Court has already found that (1) the statement that Quixtar refused to pay bonuses to IBOs in good standing purports to present a fact, (2) that statement cannot be considered opinion, parody, or satire, and (3) Quixtar provided sufficient evidence of its falsity to satisfy *Doe v. Cahill*, Quixtar is entitled to discover the identities of these five additional Anonymous Speakers. These statements, and the blogs where the Anonymous Speakers posted them, are:

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No.	Statement	Source
1.	"IBO's [sic] in good standing denied bonuses they earned."	<a href="http://q-less-q-less.blogspot.com/2008/04/would-you-trust-these-guys.html">http://q-less-q-less.blogspot.com/2008/04/would-you-trust-these-guys.html</a> , April 9, 2008 (Ex. F at p. 3).
2.	"Apparantly [sic] [Quixtar is] also refusing to pay the Q12 or QBI bonuses for hundreds of other IBOs or former IBOs that earned these rewards but happen to be affiliated with the TEAM leadership training system."	<a href="http://qreilly.blogspot.com/2007/11/win-for-team-in-texas.html">http://qreilly.blogspot.com/2007/11/win-for-team-in-texas.html</a> , November 7, 2007 (Ex. F at p. 5).
3.	"Quixtar refused to pay bonuses that many IBOs earned and worked hard to qualify for."	<a href="http://qssr.blogspot.com/2008/04/politics-and-war.html">http://qssr.blogspot.com/2008/04/politics-and-war.html</a> , April 10, 2008 (Ex. F at p. 12.)
4.	"I am talking about existing IBOs, those who have NOT resigned, let alone 'taken' others with them. Many of these people have not received bonuses that they qualified for and earned."	<a href="http://qssr.blogspot.com/2007/12/successless-from-home.html">http://qssr.blogspot.com/2007/12/successless-from-home.html</a> , December 12, 2007 (Ex. F at p. 19).
5.	"[Quixtar has] knowingly withheld bonuses earned by their distributors to the amount of millions of dollars this year alone."	<a href="http://theiborebellion.blogspot.com/2008/03/cal-to-action-part-2.html">http://theiborebellion.blogspot.com/2008/03/cal-to-action-part-2.html</a> , March 20, 2008 (Ex. F. at p. 28).
6.	"Fake customers, refusing to accept resignations, not paying earned bonuses, being big fat liars, and now giving people free renewals in order to trap them in their piece of crap business."	<a href="http://theiborebellion.blogspot.com/2008/03/deceit-and-treachery.html">http://theiborebellion.blogspot.com/2008/03/deceit-and-treachery.html</a> , March 7, 2008 (from the comments section, posted by "Anonymous") (Ex. F at p. 45).
7.	<p>"The fact that Quixtar lords over IBO's and can withhold significant bonus money on the mere suspicion of a rules violation is a testament to their totalitarian tactics."</p> <p>From the comments to this post by three anonymous posters:</p> <p>"From what I've heard, anyone remotely associated with Team will not be getting their bonuses. My upline was due over \$20K and he hasn't received his bonus. He didn't sue anybody, didn't disparage anybody, and his family has to suffer."</p> <p>"my upline platinum, as well, was due 20K. how dare Q withhold those monies from people who went out, worked their hearts out and earned it!"</p> <p>"It's disgusting that they can withhold our money. . . ."</p>	<a href="http://barristerquixtarlawsuit.blogspot.com/2007/11/quixtar-can-possibly-be-held-in.html">http://barristerquixtarlawsuit.blogspot.com/2007/11/quixtar-can-possibly-be-held-in.html</a> , November 14, 2007 (Ex. F at pp. 57- 58).

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No.	Statement	Source
8.	"Apparantly [sic] they are also refusing to pay the Q12 or QBI bonuses for hundreds of other IBOs or former IBOs that earned those rewards but happen to be affiliated with the Team leadership training system."	<a href="http://barristerquixtarlawsuit.blogspot.com/2007/11/simmons-v-quixtar-update.html">http://barristerquixtarlawsuit.blogspot.com/2007/11/simmons-v-quixtar-update.html</a> , November 8, 2007 (Ex. F at p. 60).

**b. Quixtar Is Entitled to Discover the Identities of Anonymous Speakers Who Posted Additional False and Disparaging Statements about Quixtar.**

Quixtar has also discovered false and disparaging statements by three additional Anonymous Speakers (Amway Or The Highway Blog, Quixtar Lost My Cents Blog, and the video "Amway Global/Quixtar – Tell Me Sweet Little Lies," which is posted on You Tube), as well as additional false and damaging statements by the Anonymous Speaker QSSR. Each of these statements purports to assert damaging facts about Quixtar, and each is false. Further, Quixtar has provided evidence of causation and damages. (Ex. D ¶ 10.) Under *Doe v. Cahill*, Quixtar is therefore entitled to discovery regarding the following Anonymous Speakers and statements.

(1) The Anonymous Speaker "QSSR" made the following false statements:

- "In the past 15 years, only two couples in the entire U.K. [in Amway U.K.] have succeeded in making an income large enough to leave their outside employment." <http://qssr.blogspot.com/2007/12/hubris.html>, December 1, 2007.
- "[F]ewer than ½ of 1% (.0025) of all IBOs ever make a profit from their business due to the outrageously high product prices and the untenable compensation plan." <http://qssr.blogspot.com/2008/04/politics-and-war.html>, April 10, 2008.
- "[Quixtar] refused to allow IBOs to attend trips that were earned and qualified for." <http://qssr.blogspot.com/2008/04/politics-and-war.html>, April 10, 2008.

<http://qssr.blogspot.com/2007/12/hubris.html>, December 1, 2007; <http://qssr.blogspot.com/2008/04/politics-and-war.html>, April 10, 2008 (Ex. F at pp. 8, 11-12.) These statements are damaging because they purport to state facts that would cause IBOs to wrongly believe that they have almost no chance of being successful if they work for Quixtar, and that Quixtar may take away incentive trips that they earn. As shown in the VanderVen Declaration, each of these statements is false. (Ex. D ¶¶ 6-7.) Under *Doe v. Cahill*, Quixtar is entitled to discover the identity of the Anonymous Speaker behind the QSSR Blog.

(2) The Anonymous Speaker "Amway Or The Highway" posted the following statements:

- "Amway realizes that it **IS** an internal consumption pyramid. It **KNOWS** that people aren't retailing, and it knows that the government and the courts are going to come knocking soon (as in **RIGHT NOW** in the UK) because such an internal consumption model with overpriced products **IS** illegal."
- "[N]obody can retail the Amway/Quixtar products."

<http://amwayorthehighway.blogspot.com/2007/10/reading-tea-leaves.html>, October 28, 2007

(emphasis in the original) (Ex. F. at p. 62.)

In its January 15 Order, the Court ruled that statements in the Hooded Angry Man video claiming that Quixtar knowingly violated the law were sufficiently tortious to warrant discovery under *Doe v. Cahill*. (Dkt. No. 330 at 2.)<sup>7</sup> The statement here, i.e., that Amway realizes that it is an illegal pyramid, is damaging and therefore tortious for the same reason: it accuses Quixtar/Amway of knowingly violating the law. Quixtar has provided evidence that this is false. (Ex. F ¶ 8.) As with the Hooded Angry Man's statements, these statements are also subject to discovery.

Similarly, the statement that "nobody can retail" Quixtar's products is tortious and damaging. It does not state that one particular IBO or group of IBOs was unable to retail product; rather, it claims as fact that *nobody* can retail the products because there is something inherently wrong with them. As shown in Exhibit D, this statement is demonstrably false. (Ex. D ¶ 8.) Mr. Dickie should be ordered to testify about Amway Or The Highway.

(3) The Anonymous Speaker "Quixtar Lost My Cents" maintained on her blog a comment by "Jason" stating:

The problem is you cannot run a legitimate business selling amway [sic] products with the prices so high and the profit margin so little. . . . it forces one to build a network and 'sell' to their own network of IBOs. . . . Amway is way overboard which is why they only do 3.4% retail which puts IBOs at legal risk with the FTC.

<sup>7</sup> In the January 15 Order, the Court granted discovery on the author of the statements in the Hooded Angry Man video that "Quixtar is aware of, approves, promotes, and facilitates the systematic noncompliance with the FTC's Amway rules," and that "Quixtar knows that it violates the Amway rules and has disregarded this fact for years." (Dkt. No. 330 at 2.)

1 <http://quixtarlostmycents.blogspot.com/2007/11/daily-multivitamin-comparison.html>,  
 2 November 14, 2007 (Ex. F. at pp. 83-84). This statement is damaging because it asserts as fact  
 3 that IBOs cannot run a legitimate, lawful Quixtar business, and that if they attempt to sell Quixtar  
 4 products, they will be at legal risk. This statement is false (Ex. D ¶ 8), and Quixtar is entitled to  
 5 discovery on this speaker.

6 (4) The Anonymous Speaker "Amway Global/Quixtar – Tell Me Sweet Little Lies"  
 7 posted a video on You Tube that contained the following statements:

- 8 • 67.8% of IBOs that registered last year, did not renew this year.
- 9 • Only 18.4% of IBOs registered even one person.
- 10 • 65.6% of IBOs never once attained 100 personal PV in the previous eleven months.
- 11 • The average IBO had 38.5 PV/month (100 PV is shown in the plan).

12 Amway Global/Quixtar – Tell Me Sweet Little Lies video, posted at [www.youtube.com](http://www.youtube.com/watch?v=NAwJrP1_ZeE)  
 13 /watch?v=NAwJrP1\_ZeE, on September 9, 2007 (Ex. F at p. 88). Each of these statements is  
 14 damaging because each purports to assert facts showing that Quixtar IBOs are unsuccessful in  
 15 their businesses. Each of these statements is false. (Ex. D ¶ 9.) Quixtar is therefore entitled to  
 16 discovery on the speaker of these statements.

17 In short, Quixtar has provided evidence that eight Anonymous Speakers made false and  
 18 damaging statements about Quixtar in fifteen separate blogs, posts, and videos. Quixtar also  
 19 provided evidence of causation and damages. Under *Doe v. Cahill* and the Court's prior Orders,  
 20 Quixtar is entitled to discovery on each and every one of those Anonymous Speakers. The  
 21 motion to compel should be granted.

22 **2. Quixtar Is Entitled to Discover the Identity of the Anonymous Speaker**  
 23 **"Q'Reilly," Who Posted False and Misleading Statements Designed to**  
 24 **Enhance TEAM's Reputation at the Expense of Quixtar.**

25 As discussed above, TEAM's Free The IBO Blog hyperlinked to numerous blogs that  
 26 contained false and disparaging statements about Quixtar that were designed to convince IBOs to  
 27 quit their Quixtar contracts. In addition, one of the blogs to which TEAM hyperlinked contained  
 28 false and misleading statements designed to show that TEAM's leaders truthfully reported the  
 events of their August 2007 meeting with Quixtar, and that Quixtar's explanation of what

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happened at that meeting was untruthful. As Quixtar has briefed elsewhere, on August 9, 2007, Quixtar representatives met with leaders of TEAM to attempt to remediate the TEAM members' repeated violations of Quixtar's Rules of Conduct. (*See* Dkt. No. 141 at 4-5, Ex. C at ¶ 31.) TEAM, however, did not agree to comply with the Rules. On the contrary, TEAM indicated that it intended to form a competing MLM and insisted that Quixtar waive provisions in the Rules prohibiting TEAM's members from competing against Quixtar for six months and from soliciting other IBOs for two years. (*See id.*) When Quixtar refused to allow TEAM to solicit its IBOs in violation of the Rules, TEAM subscribers launched a massive wave of lawsuits and disparaging websites and blogs against Quixtar. (Dkt. No. 141, Ex. C, ¶ 32.)

In an effort to persuade IBOs to leave Quixtar and join TEAM, TEAM drew IBO readers of its Free The IBO Blog to the Q'Reilly blog, which contained the following false statements:

- "Now. . . we have 2 independent parties that were in the room at the August 9 meeting, and both confirm that Orrin and Chris DID NOT 'promise to solicit' IBO's [sic] as Quixtar/Amway has stated. Quixtar/Amway totally jumped the gun and got EMERGENCY Temporary Restraining Orders against Orrin and Chris based upon an ASSUMPTION."
- "To comply with the rules, Orrin was willing to wait six months before attempting to start any other business venture. This is all Orrin wanted, nothing more. It was not his desire to be involved in a lawsuit with the Corporation."
- "Randy Haugen (present at the meeting) states: ' . . . the next thing I know, they are telling untruths about what went on in the meeting. What totally shocked me was they accused us of having an MLM put together, and that Orrin was trash talking them, all things that weren't true in any way.'"

<http://qreilly.blogspot.com/2007/09/liethe-cover-up-part-1.html>, September 26, 2007. (Ex. F at pp. 91-92.) These statements are false. (*See* February 8, 2008 Declaration of Gary VanderVen ISO Motion to Compel, Dkt. No. 54-2, ¶¶ 31-32.) They are designed to convince IBOs that TEAM is an innocent party, and Quixtar a dishonest party, so that IBOs will leave Quixtar for TEAM. And, as shown in the VanderVen Declaration, this strategy was highly successful, contributing to the exodus of tens of thousands of IBOs who left behind years of business with Quixtar to align with a competing MLM in TEAM and ultimately Mona Vie. (Ex. D ¶ 10.)

In short, these statements on Q'Reilly are false, and they damaged Quixtar. TEAM's linking to that blog to direct IBOs to read the statements was an integral part of its efforts to bring


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1 IBOs to a competing MLM. Accordingly, these false statements are actionable and subject to  
2 discovery.

3 **C. Quixtar Is Entitled to Discover the Identities of Speakers Who Posted**  
4 **Solicitations to IBOs that Were Hyperlinked to TEAM's Blog.**

5 Finally, Quixtar has discovered that four Anonymous Speakers whose blogs were  
6 hyperlinked to TEAM's Free The IBO Blog (QSSR, Quixtar Lost My Cents, The Q-  
7 Whistleblower, and Lives Turned Upside Down) posted direct, explicit solicitations to IBOs to  
8 leave Quixtar and join TEAM (we refer to these as the "Solicitation Statements"). These  
9 statements are:

10 (1) The Anonymous Speaker QSSR posted the following solicitations on his blog:

11 Here are my predictions for the coming year:

12 — TEAM will launch an MLM-type business opportunity with  
13 various consumable products —some exclusive to TEAM and some  
14 not. Prices will be competitive and the compensation plan will be  
15 outstanding.

16 — Thousands and thousands of remaining Quixtar IBOs will resign  
17 from Quixtar when they see the TEAM is going forward. Many  
18 people have been just biding their time, waiting for a new business  
19 opportunity to launch.

20 . . . .

21 — In spite of the resources diverted for legal defense, the TEAM  
22 will flourish. Growth will sky-rocket [sic] across the continent.  
23 Hundreds will qualify for Round Table. The year 2008 will herald  
24 the onset of the first truly mainstream MLM-type business,  
25 primarily because of the leadership development side.

26 — Thousands of businesses will flock to affiliate with TEAM. The  
27 TEAM headquarters will be swamped with possible partners as  
28 companies realize the power of the TEAM community.

— Thousands of ordinary men and women will achieve  
extraordinary results in their lives because of their affiliation with  
the TEAM. . . . people will realize financial success they could only  
imagine.

http://qssr.blogspot.c om/2008/01/happy-2008.html, January 7, 2008 (Ex. F at pp. 95-96).

(2) The Anonymous Speaker Quixtar Lost My Cents posted the following solicitations on  
her blog:

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I have only one thing to say to all those wondering about the character of a man like Orrin Woodward. Should I follow this man? Should I believe all the disparaging remarks that are said of him? Read for yourself [hyperlink to orrinwoodward.blog harbor.com]. Read and see if you find the man Alticor would like you to believe he is: A Greedy LOS Stealer! Or do you find a godly man who wishes to offer each and every person the right to succeed under a free enterprise system and in doing [sic] so preserve this great nation we are all blessed to live in.

<http://quixtarlostmycents.blogspot.com>, November 1, 2007 (Ex. F at p. 105).

(3) The Anonymous Speaker The-Q-Whistleblower posted the following solicitations on his blog:

If you haven't been reading Orrin's blog on a regular basis (I'd suggest now is a good time to start checking it daily), you're missing out on some incredible leadership information! But in the near future it sounds like you will also be missing out on some important information about the future from Orrin & Chris. Check out Orrin's post from this morning on his blog.

[Posted from Orrin Woodward's blog]: Traffic on this blog has nearly doubled again. Must be some excitement bubbling up for the mid-February announcements on Chris and my future plans and the MLM Benchmarking Study. . . . Are there any other hungry students desiring to think, discuss, learn, and change out there? IF there are, let's add them to our community.

<http://the-q-whistleblower.blogspot.com/2008/02/orrinsleadership-blog-is-on-fire.html>, February 7, 2008 (Ex. F at p. 106).

(4) The Anonymous Speaker Lives Turned Upside Down posted the following solicitations on his blog:

- According to Orrin Woodward's Blog, Orrin has been benchmarking MLMs and will be sharing his findings soon.

[Excerpt from Orrin Woodward's blog] I benchmarked many companies in the MLM/Networking filed recently. In another month, I will share the results from my benchmarking study. . . . Would a benchmarking study of the MLM/Networking industry be of value to you?

One month ladies and gentlemen, then we can have a professional and informed view on what some good choices to make may be for us!

- "Looks to me like Mona Vie has more than doubled its site traffic in the same amount of time Amway lost over half. Also note that Mona Vie did not gain the same rough numbers that Amway lost, so it was NOT just a shift of distributors from an illegal pyramid to a valid business opportunity. It was more like over 40k IBOs jumping ship from a dangerous endeavor, and several thousand new distributors choosing to join the

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1 world of network marketing while the majority of the 40k that left Amway sit out an  
2 illegal non-compete clause.”

- 3 • [From a comment posted by “amthrax”]: “[W]hy do you have to start your MV  
4 [MonaVie] business from scratch? Were you not able to migrate your entire downline  
5 into MV as Orrin did? HE went from a new MV distributor to Black Diamond in the  
6 span of just a few months, so I have to believe that the structure of his downline were  
7 transferred over from his A/Q LOS.”

8 <http://liveturnedupsidedown.blogspot.com/2008/01/benchmarking-mlms.html>, January 16, 2008;  
9 and <http://liveturnedupsidedown.blogspot.com/2008/04/way-to-decide.html>, April 9, 2008 (Ex. F  
10 at p. 108). Mr. Dickie should be ordered to testify about the parties who posted these Solicitation  
11 Statements.

12 As discussed above, TEAM’s strategy to solicit Quixtar’s IBOs involved two types of  
13 statements: (1) false and highly disparaging statements and (2) Solicitation Statements that  
14 encouraged, invited, and urged IBOs to leave Quixtar and follow TEAM. Essentially, the false  
15 statements of fact informed IBOs of purported reasons why they should leave Quixtar, and the  
16 Solicitation Statements told them where they should go after they left. Accordingly, the  
17 Solicitation Statements go to the interference.<sup>8</sup> Quixtar is entitled to discovery regarding the  
18 authors of these statements for each of the following reasons.

19 *First*, the Anonymous Speakers will likely argue that Quixtar is not entitled to any  
20 discovery unless it shows that each Solicitation Statement is independently actionable under *Doe*  
21 *v. Cahill*. This is wrong. *Doe v. Cahill* provides a threshold test in cases where the plaintiff is  
22 aware of potentially tortious speech but does not know the identity of the speaker. If the plaintiff  
23 makes a sufficient showing, he or she is then entitled to compel the identity of the speaker and  
24 name him or her a defendant. That is as far as *Doe v. Cahill* goes; its test is simply used to  
25 determine whether the anonymous speaker must come forward and stand as a defendant. Once  
26 the plaintiff satisfies *Doe v. Cahill* and obtains the identity, then nothing in that case stands in the

27 <sup>8</sup> Moreover, Quixtar’s IBOs were contractually obligated not to solicit other IBOs. To the  
28 extent that the persons making the Solicitation Statements on the linked blogs were themselves  
IBOs, TEAM’s facilitation of their solicitations constitutes inducement of them to breach their  
own IBO contracts for the improper purpose of hurting Quixtar and helping TEAM.



1 way of the normal rules of discovery. In other words, once the court allows the case to proceed  
2 against the defendant, then just as in any other lawsuit, the plaintiff is entitled to full discovery on  
3 all of the defendant's activities that are relevant to the claims. In a tortious interference case,  
4 once the plaintiff shows that the defendant made tortious statements, he or she is entitled to ask  
5 about everything else the defendant did in his or her efforts to interfere. Thus, the plaintiff can  
6 ask "What did you say to my distributors to encourage them to leave?" or "What did you post  
7 online to encourage my distributors to leave?" Here, TEAM is not an anonymous party; it is the  
8 named defendant, and Quixtar has provided evidence that TEAM tortiously interfered. Quixtar is  
9 therefore entitled to question Mr. Dickie about any involvement TEAM had (through those acting  
10 on its behalf, such as its employees, agents, or leaders) in posting the Solicitation Statements on  
11 these four blogs.

12 *Second*, with respect to two of these four Anonymous Speakers (QSSR and Quixtar Lost  
13 My Cents), Quixtar has provided evidence above that they posted false and disparaging tortious  
14 statements on their blogs. (*See* pp. 12-15, *supra*, and Exhibit F at pp. 8-19 and 83-84.) Quixtar  
15 has therefore satisfied *Doe v. Cahill* with respect to those speakers, and they have no First  
16 Amendment right to anonymity. Accordingly, Mr. Dickie must testify about the posting of  
17 Solicitation Statements by QSSR and Quixtar Lost My Cents.

18 *Finally*, even if it turns out that the other two Anonymous Speakers who posted  
19 Solicitation Statements urging IBOs to join TEAM (The-Q-Whistleblower and Lives Turned  
20 Upside Down) were not actually acting on behalf of TEAM, but were simply parties who were  
21 sympathetic to TEAM, Quixtar is still entitled to discovery regarding any involvement TEAM  
22 may have had in those statements,<sup>9</sup> such as creating, editing, contributing to, approving, or  
23 posting the Solicitation Statements.<sup>10</sup> Quixtar can also question Mr. Dickie about TEAM's  
24

25 <sup>9</sup> It strains credulity to imagine that persons who have *no* involvement with TEAM would  
26 nevertheless be so interested in the dispute between Quixtar and TEAM that they would take the  
time to create a blog and post statements encouraging others to join TEAM.

27 <sup>10</sup> To the extent these individuals were not acting at the behest of TEAM and were not  
28 otherwise affiliated with TEAM, Quixtar does not seek the identity of these Speakers.

1 actions in creating hyperlinks from its Free The IBO Blog that led directly to the sites containing  
2 these Solicitation Statements.

3 **V. CONCLUSION**

4 Mr. Dickie directed traffic on TEAM's blogosphere identifying, promoting, and  
5 publishing disparaging statements about Quixtar and explicit solicitations of Quixtar IBOs. Mr.  
6 Dickie cannot hide behind the purported anonymity of certain online speakers to cover up  
7 TEAM's coordinated campaign to raid Quixtar's distributors. Mr. Dickie should be ordered to  
8 testify about each of the purportedly Anonymous Speakers who posted tortious statements and/or  
9 Solicitation Statements, as set forth at Exhibit F.

10 Dated: March 9, 2009

/s/ Miranda Du

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1 CERTIFICATE OF SERVICE

2 I hereby certify, under penalty of perjury, that I am an employee of McDonald Carano  
3 Wilson LLP and that, pursuant to LR 5-3, on this date I caused to be electronically filed a true and  
4 correct copy of Plaintiff Quixtar Inc.'s Motion to Compel Deponent Benjamin Dickie to Testify  
5 About Additional Anonymous Online Speakers with the Clerk of the Court using the CM/ECF  
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**LIST OF EXHIBITS**

<b>Exhibit No.</b>	<b>Description</b>	<b>No. of Pages</b>
A	Quixtar, IBO's use Web to Spar	2
B	Bitter Amway Fight Has Local Tie	3
C	List of Fee The IBO Statements (compiled)	51
D	Declaration of Gary D. Vanderven	11
E	March 6, 2009, letter from Chao to Schouman	9
F	List of Actionable Statements (complied blogs)	121
G	Leadership Tips and Treasures excerpts	3

[REDACTED]